रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 5] नई दिल्ली, जनवरी 27—फरवरी 2, 2019, शनिवार/माघ 7—माघ 13, 1940
No. 5] NEW DELHI, JANUARY 27—FEBRUARY 2, 2019, SATURDAY/ MAGHA 7— MAGHA 13, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 24 जनवरी, 2019

का.आ. 164.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 4 की उप-धारा (1) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय निर्यात-आयात बैंक की प्राधिकृत पूंजी को दस हजार करोड़ रुपए से बढ़ाकर बीस हजार करोड़ रुपए करती है।

[फा. सं. 15/24/2018-आईएफ-I]

सौम्यजित घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 24th January, 2019

S.O. 164.—In exercise of the powers conferred by the proviso to sub-section (1) of section 4 of the Export-Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby increases the authorized capital of the Export-Import Bank of India from the existing ten thousand crores of rupees to twenty thousand crores of rupees.

[F. No. 15/24/2018-IF-I]

SOUMYAJIT GHOSH, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 4 दिसम्बर, 2018

का. आ. 165.— राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के राजदूतावास, बेलग्रेड में श्री संजीव कुमार इंसान, सहायक अनुभाग अधिकारी को दिनांक 4 दिसम्बर 2018 से सहायक कोंसुलर अधिकारियों के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 4th December, 2018

S. O. 165.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Sanjeev Kumar Insan, Assistant Section Officer, in Embassy of India, Belgrade to perform Consular services as Assistant Consular Officer with effect from 4 December, 2018.

[No. T. 4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 5 दिसम्बर, 2018

का.आ. 166.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, केंद्र सरकार भारत के उच्चायोग, नैरोबी में श्रीमति अंजना भाटिया, निजी सहायक को दिनांक 5 दिसम्बर 2018 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2016]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 5th December, 2018

S.O. 166.— Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Smt Anjana Bhatia, Personal Assistant as Assistant Consular Officer in the High Commission of India, Nairobi to perform Consular services with effect from 5 December, 2018.

[No. T. 4330/01/2016]

PRAKASH CHAND, Director (Cons.)

नई दिल्ली, 11 दिसम्बर, 2018

का. आ. 167.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, केंद्र सरकार भारत के दूतावास, वार्सा में श्री योगेश पांडे, सहायक अनुभाग अधिकारी को दिनांक 11 दिसम्बर 2018 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी.4330/01/2016]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 11th December, 2018

S.O. 167.— Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Yogesh Pandey, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Warsaw to perform the Consular services with effect from 11 December, 2018.

[No. T. 4330/01/2016]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 13 दिसम्बर, 2018

का. आ. 168.—कानूनी आदेश राजनयिक और कोंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण मे केंद्र सरकार श्री सय्यद मोहसीन अहमद, सहायक अनुभाग अधिकारी को 13 दिसम्बर, 2018 से भारत के राजदूताबास, हवाना में सहायक कोंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 13th December, 2018

S.O. 168.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorizes Shri Syed Mohseen Ahmed, Assistant Section Officer in Embassy of India, Havana to perform the Consular services as Assistant Consular Officer with effect from 13 December, 2018.

[No.T.4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 15 जनवरी, 2019

का. आ. 169.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के राजदूतावास, सियोल में श्री संजीब कुमार सिन्हा, सहायक अनुभाग अधिकारी को दिनांक 15 जनवरी 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 15th January, 2019

S.O. 169.— Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Sanjib Kumar Sinha, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Seoul to perform the Consular services with effect from 15 January, 2019.

[No. T. 4330/01/2015]

PRAKASH CHAND, Director (Consular)

कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय

(कार्मिक एवं प्रशिक्षण विभाग)

नई दिल्ली, 23 जनवरी, 2019

का. आ. 170.—चूंकि पंजाब राज्य सरकार के गृह एवं न्याय विभाग, पंजाब सरकार की अधिसूचना सं. 7/76/2016-4एच4/1533, दिनांक 24 अगस्त, 2016 एवं भारत सरकार की कार्मिक एवं प्रशिक्षण विभाग, नई दिल्ली की अनुवर्ती अधिसूचना संख्या 228/41/2016.एवीडी-II, दिनांक 7 सितम्बर, 2016 द्वारा पुलिस थाना डिविजन सं. 4, पुलिस आयुक्तालय, जालंधर, पंजाब में भा. दं. संहिता की धारा 307, 34, आयुध अधिनियम की धारा 25, 27, 54, 59 में दर्ज प्रथम सूचना रिपोर्ट सं. 113 दिनांक 06.08.2016 के अन्वेषण का जिम्मा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का केंद्रीय अधिनियम सं. XXV) के तहत केंद्रीय अन्वेषण ब्यूरो को सौंपा गया था;

चूंकि, उक्त मामले जटिलता जो राज्य की शांति एवं सांप्रदायिक सौहार्द को प्रभावित कर सकती है, को ध्यान में रखते हुए पंजाब सरकार द्वारा अब उक्त मामले (दिनांक, 6 अगस्त, 2016 को दर्ज प्रथम सूचना रिपोर्ट) का अन्वेषण राष्ट्रीय जांच एजेंसी को सौंपने का निर्णय लिया गया है;

चूंकि, उक्त उद्येश्य की पूर्ति के क्रम में पंजाब राज्य सरकार ने अपनी अधिसूचना सं. 7/100/2016-4H4/3446, दिनांक 17.07.2018 के द्वारा उपरोक्त अधिसूचना सं. 7/76/2016-4H4/1533, दिनांक 24 अगस्त, 2016 को वापस ले लिया है, ताकि भारत सरकार अपनी अनुवर्ती अधिसूचना सं. 228/41/2016-एवीडी-II, दिनांक 7 सितम्बर, 2016 को वापस ले सके और मामला राष्ट्रीय जांच एजेंसी को सौंपा जा सके;

अतः अब केंद्र सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 5 की उप-धारा (1) के साथ पठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पंजाब सरकार, गृह एवं जेल विभाग (गृह-IV शाखा) के पृष्ठांकन सं. 7/76/2016-4H4/1535, दिनांक 24.08.2016 द्वारा जारी अधिसूचना सं. 7/76/2016-4H4/1533, को वापस लेने की दृष्टि से]सहर्ष अपनी अधिसूचना सं. 228/41/2016-एवीडी-II, दिनांक 7 सितम्बर, 2016 को अनधिसूचित कर वापस लेती है एवं पुलिस थाना डिवीजन सं. 4, पुलिस आयुक्तालय, जालंधर, पंजाब में भा. दं. संहिता

की धारा 307, 34 एवं आयुध अधिनियम की धारा 25, 27, 54, 59 के तहत दर्ज प्रथम सूचना रिपोर्ट सं. 113, दिनांक 06.08.2016 का अन्वेषण राष्ट्रीय जांच एजेंसी को अंतरित करते हुए निर्देश देती है कि राष्ट्रीय जांच एजेंसी उपरोक्त मामले से जुड़े अथवा उक्त मामले से संबद्ध हत्या के प्रयास, षडयंत्र का खुलासा तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न प्रासंगिक अन्य अपराधों का अन्वेषण करे तथा अन्वेषण को तर्कपूर्ण निष्कर्ष तक पहुंचाए।

[फा. सं. 228/41/2016-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 23rd January, 2019

S.O. 170.—Whereas investigation of FIR No.113 dated 06.08.2016 under section 307,34 IPC section 25,27,54,59 Arms Act, Police Station Division No.4, Police Commissionerate Jalandhar, Punjab was entrusted to the Central Bureau of Investigation under the Delhi Special Police Establishment Act, 1946 (Central Act No.XXV of 1946), by the State Government of Punjab, vide Government of Punjab, Department of Home Affairs and Justice, Notification No.7/76/2016-4H4/1533, dated the 24th August 2016 and subsequent Notification No.228/41/2016-AVD-II dated 7th of September 2016 issued by the Govt. of India, Department of Personnel and Training, New Delhi;

Whereas, now the decision has been taken by the State Government of Punjab to entrust the investigation of the said case (registered vide aforesaid FIR dated the 6th August 2016) to the National Investigation Agency keeping in view the ramifications involved in the said case, which are detrimental to the peace and communal harmony in the State;

Whereas in order to achieve the said object, the State Government of Punjab has withdrawn the aforesaid Notification No. 7/76/2016-4H4/1533, dated the 24th August 2016, vide its notification No. 7/100/2016-4H4/3446 dated 17/07/2018 to enable the Government of India to withdraw its subsequent Notification No.228/41/2016-AVD-II dated 7th September 2016, so that the case can be entrusted to National Investigation Agency;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government, in view of the withdrawal of the State Government of Punjab, Department of Home Affairs and Jails (Home-IV Branch) Notification No.7/76/2016-4H4/1533 issued vide Endst. No. 7/76/2016-4H4/1535 dated 24.08.2016, is pleased to de-notify and withdraw its Notification No. 228/41/2016-AVD-II dated 7th of September 2016, for transfer of the investigation of Case FIR No.113 dated 06.08.2016 under section 307,34 IPC section 25,27,54,59 Arms Act, Police Station Division No.4, Police Commissionerate Jalandhar, Punjab to let the National Investigation Agency investigate the aforesaid case of attempt to murder, to unearth the conspiracy in relation thereto or in connection therewith, and any other offence committed in the course of same offence or arising out of the same incident, to reach a logical conclusion in the investigation.

[F. No. 228/41/2016-AVD-II]

S.P.R. TRIPATHI, Under Secy.

संचार मंत्रालय

(डाक विभाग)

नई दिल्ली, 25 जनवरी, 2019

का. आ. 171.—राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग), 1976 के नियम 10 के उप नियम (4) के अनुसरण में केन्द्र सरकार, डाक विभाग के अधीनस्थ कार्यालय मुख्य पोस्टमास्टर जनरल, केरल सर्किल, तिरुवनन्तपुरम-695033 के निम्नलिखित 04 कार्यालयों जिनके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:-

1. वरिष्ठ पोस्टमास्टर का कार्यालय, एरनाकुलम प्रधान डाकघर- 682011
2. वरिष्ठ पोस्टमास्टर का कार्यालय, कोट्टयम प्रधान डाकघर- 686001
3. डाक अधीक्षक का कार्यालय, तिरुवनन्तपुरम (दक्षिण) मंडल- 695036
4. डाक अधीक्षक का कार्यालय, लक्षद्वीप मंडल-682555

[सं. 11017-1/2015-रा.भा.]

राजेश सिंह, उप महा निदेशक (ईएमएम/राजभाषा)

MINISTRY OF COMMUNICATION

(Department of Posts)

New Delhi, the 25th January, 2019

S.O. 171.—In Pursuance of Rule 10(4) of the Official Language (use for official Purposes of the Union) Rule 1976, the Central Government hereby notifies following 04 offices of the O/o Chief Postmaster General, Kerala Circle, Thiruvananthapuram -695033 of the Department of Posts where more than 80% Officers/Officials has acquired the working knowledge of Hindi:-

1. O/o The Senior Postmaster, Ernakulam Head Post Office - 682011
2. O/o The Senior Postmaster, Kottayam Head Post Office – 6686001
3. O/o The Superintendent of Post Offices, Thiruvananthapuram (South) Division- 695036
4. O/o The Superintendent of Post Offices, Lakshadweep Division- 682555

[No. 11017-1/2015-OL]

RAJESH SINGH, Dy. Director General (E.M.M./O.L.)

पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय

नई दिल्ली, 30 जनवरी, 2019

का. आ. 172.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में अधिकार के उपयोग का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ 1 में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ 2 में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के संबंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात:—

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री सनातन मल्लिक, सक्षम प्राधिकारी, पारादीप-सोमनाथपुर-हल्दीआ पाइपलाइन परियोजना इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन्स प्रभाग क्वार्टर नंबर- एमसी-103 पीपीटी कॉलोनी, मधुबन पारादीप पोस्ट बॉक्स संख्या-83, पारादीप मुख्या डाक घर, पारादीप जिला-जगतसिंहपुर, ओडिशा-754142	ओडिशा राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-11025(11)/239/2017-ओआर-I/ई-13892]

नोवस किन्डो, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 30th January, 2019

S.O. 172.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the area mentioned in column (2) of the Schedule:—

SCHEDULE

Name and address of the Authority (1)	Area of jurisdiction (2)
Shri Sanatan Mallik, Competent Authority, Paradip-Somnathpur-Haldia Pipeline Project Indian Oil Corporation Limited, Pipelines Division Quarter No. MC-103 PPT Colony, Madhuban Paradip Post Box No. 83, Paradip Mukhya Dak Ghar, Paradip District- Jagatsinghpur, Odisha – 754142	State of Odisha

This notification is applicable from the date of issue.

[F. No. R-11025(11)/239/2017-OR-I/E-13892]

NOAS KINDO, Under Secy.

नई दिल्ली, 30 जनवरी, 2019

का. आ. 173.—केन्द्रीय सरकार, पेट्रोलियम एवं खनिज पाइपलाइन (भूमि में अधिकार के उपयोग का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ 1 में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ 2 में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के संबंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात:—

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता का क्षेत्र (2)
श्री बिमल प्रसाद मोहंती, सक्षम प्राधिकारी, पारादीप-सोमनाथपुर-हल्दीआ पाइपलाइन परियोजना इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन्स प्रभाग क्वार्टर संख्या बी/2, इंडियन आयल आवासीय कॉलोनी, मेघडम्बरू, पोस्ट बॉक्स:कुरुदा, बालासोर- 756056 (ओडिशा)	ओडिशा राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. आर-11025(11)/239/2017-ओआर-I/ई-13892]

नोवस किन्डो, अवर सचिव

New Delhi, the 30th January, 2019

S.O. 173.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the area mentioned in column (2) of the Schedule:-

SCHEDULE

Name and address of the Authority (1)	Area of jurisdiction (2)
Shri Bimal Prasad Mohanty, Competent Authority, Paradip-Somnathpur-Haldia Pipeline Project Indian Oil Corporation Limited, Pipelines Division Quarter No.B/2, Indian Oil Residential Colony, Meghadambaru, PO : Kuruda, Balasore-756056 (Odisha)	State of Odisha

This notification is applicable from the date of issue.

[F. No. R-11025(11)/239/2017-OR-I/E-13892]

NOAS KINDO, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 24 जनवरी, 2019

का. आ. 174.—कोलियरी नियंत्रण नियमावली, 2004 के नियम 3 के साथ पठित खान एवं खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का 67) के खण्ड 18 के उप-खण्ड (1) और (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार एतद्वारा दिनांक 30 दिसंबर, 2011 के का.आ. 2920 (अ) के तहत भारत के राजपत्र, असाधारण, भाग-II, खंड-3, उप-खंड (ii) में प्रकाशित कोयला मंत्रालय, भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है अर्थात्:—

उक्त अधिसूचना में तालिका के लिए निम्नलिखित तालिका प्रतिस्थापित की जाएगी अर्थात्

"तालिका

क्र.सं.	कोकिंग कोल ग्रेड	विशेष विवरण
1.	स्टील ग्रेड-I	राख की मात्रा 15 प्रतिशत से अधिक नहीं।
2.	स्टील ग्रेड- II	राख की मात्रा 15 प्रतिशत से अधिक लेकिन 18 प्रतिशत से अधिक नहीं।
3.	वाशरी ग्रेड-I	राख की मात्रा 18 प्रतिशत से अधिक लेकिन 21 प्रतिशत से अधिक नहीं।
4.	वाशरी ग्रेड-II	राख की मात्रा 21 प्रतिशत से अधिक लेकिन 24 प्रतिशत से अधिक नहीं।
5.	वाशरी ग्रेड-III	राख की मात्रा 24 प्रतिशत से अधिक लेकिन 28 प्रतिशत से अधिक नहीं।
6.	वाशरी ग्रेड-IV	राख की मात्रा 28 प्रतिशत से अधिक लेकिन 35 प्रतिशत से अधिक नहीं।
7.	वाशरी ग्रेड-V	राख की मात्रा 35 प्रतिशत से अधिक लेकिन 42 प्रतिशत से अधिक नहीं।
8.	वाशरी ग्रेड-VI	राख की मात्रा 42 प्रतिशत से अधिक लेकिन 49 प्रतिशत से अधिक नहीं।"

[फा. सं. 43016/9/2015-सीआरसी-I]

आर.के. सिन्हा, संयुक्त सचिव

टिप्पणी: प्रमुख अधिसूचना दिनांक 30 दिसम्बर, 2011 के का.आ. 2920(अ) के तहत भारत के राजपत्र, असाधारण, भाग-II, खंड-3, उप-खंड (ii) में प्रकाशित की गई थी।

MINISTRY OF COAL

New Delhi, the 24th January, 2019

S.O. 174.—In exercise of the powers conferred by sub-sections (1) and (2) of section 18 of the Mines and Minerals (Development and Regulation) Act,1957 (67 of 1957) read with rule 3 of the Colliery Control Rules, 2004, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Coal published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) *vide* S.O.2920(E), dated the 30th December, 2011 namely:—

In the said notification, for the TABLE, the following TABLE shall be substituted namely:—

"TABLE

Sl.No.	Coking Coal Grade	Specification
1.	Steel Grade-I	Ash content not exceeding 15 percent.
2.	Steel Grade-II	Ash content exceeding 15 percent. but not exceeding 18 percent.
3.	Washery grade -I	Ash content exceeding 18 percent. but not exceeding 21 percent.
4.	Washery Grade-II	Ash content exceeding 21 percent. but not exceeding 24 percent.
5.	Washery Grade-III	Ash content exceeding 24 percent. but not exceeding 28 percent.
6.	Washery Grade-IV	Ash content exceeding 28 percent. but not exceeding 35 percent.
7.	Washery Grade-V	Ash content exceeding 35 percent. but not exceeding 42 percent.
8.	Washery Grade-VI	Ash content exceeding 42 percent. but not exceeding 49 percent.".

[F. No. 43016/9/2015-CRC-I]

R.K. SINHA, Jt. Secy.

Note: The Principal Notification was published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide S.O. 2920(E) dated the 30th December, 2011.

नई दिल्ली, 28 जनवरी, 2019

का.आ. 175.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 1278, तारीख 30 अगस्त, 2018, भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), तारीख 26 अगस्त, 2018 – 01 सितम्बर, 2018 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में, या उस पर के अधिकार (जिसे इसमें इसके पश्चात उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर आत्यांतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और केन्द्रीय सरकार का यह समाधान हो गया कि ईस्टर्न कोलफील्ड्स लिमिटेड, संक्टोरिया, डाकघर दिशरगढ़, जिला पश्चिम बर्दमान – 713333 (पश्चिम बंगाल) (जिसे इसमें इसके पश्चात सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए तैयार है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि और उस पर के सभी अधिकार, तारीख 30 अगस्त, 2018 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :-

(1) सरकारी कंपनी,उक्त अधिनियम के उपबंधों और अन्य सुसंगत विधि के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी इत्यादि से संबंधित और वैसी ही मदों की बाबत् सभी संदाय करेगी ;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकम का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में, उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपील आदि विधिक कार्यवाहियों की बाबत उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार, उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के पूर्वोक्त अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी के पास केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि में इस प्रकार निहित किसी भी अधिकारों को किसी अन्य व्यक्तियों को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिये जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/15/2017- एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

New Delhi, the 28th January, 2019

S.O. 175.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 1278, dated the 30th August, 2018, published in the Gazette of India, Part II Section 3, Sub-section (ii), dated the August 26 –September 1,2018, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Eastern Coalfields Limited, Sanctoria, Post Office Dishergarh, District Paschim Bardhaman- 713333 (West Bengal) (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the said land and all rights in or over the said land so vested shall with effect from the 30th August, 2018 instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely :-

(1) the Government Company shall make all payments in respect of compensation, interest, damages, etc. and the like, as determined under the provisions of the said Act and other relevant law;

(2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings including appeals, etc. for or in connection with the rights, in or over the said land, so vesting, shall also be borne by the Government Company;

(3) the Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) the Government Company shall have no power to transfer the said land and rights to any other persons without the prior approval of the Central Government ; and

(5) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F.No. 43015/15/2017-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 21 जनवरी, 2019

का. आ. 176.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:—

अनुसूची

क्र. सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष/ माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्ष	भा मा सं. (भाग/ अनुभाग) : वर्ष
1.	6500036209	20181207	मेसर्स जेस पी वी सी पाइप्स एस एफ सं:232, पॉवर होस रोड, कोट्टैपालयम, एस.एस. कुलम, कोयम्बत्तूर-641110.	पेयजल आपूर्ति के लिए अप्लास्टिकृत पी वी सी पाइप	IS 4985: 2000
2.	6500036310	20181210	मेसर्स अम्बी प्लाई पेनल्स एण्ड डोर्स 678/3, कुरुम्बनूर, दासनुर पोस्ट, मेटूपालयम, कोयम्बत्तूर-641305.	कंक्रीट शटरिंग कार्य के लिए प्लाइवुड	IS 4990: 2011
3.	6590007620	20181212	मेसर्स टी. पलनीसामी गौन्डर सन्स एवं को 266, नेताजी रोड, ईरोड -638001.	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी – शुद्धता एवं मुहरांकन	IS 1417 : 2016
4.	6500036411	20181218	मेसर्स सहयाद्री इंडस्ट्रीस लिमिटड प्लॉट सं: KK2 सिपकोट इंडस्ट्रियल ग्रोथ सेंटर, पेरुन्दुरै, ईरोड-638052.	एस्बेस्टॉस सिमेंट की नालीदार और अर्ध-नालीदार सिमेंट की चद्दरें	IS 459: 1992
5.	6500036512	20181218	मेसर्स समयक मोटर्स प्रायवेट लिमिटड 3/34 C, अतिपालयम रोड, अतिपालयम, कोयम्बत्तूर-641110.	कृषि स्प्रेयर और इसी तरह के अनुप्रयोगों के लिए छोटे आकार की स्पार्क इग्निशन इंजन का प्रदर्शन	IS 7347: 1974
6.	6500036605	20181219	मेसर्स स्पार्क इन्ड प्लास्ट	गर्म तथा ठंड पानी के लिए प्लास्टिक की बिब	IS 9763:

			320, संगन्नूर मुख्य सड़क, गणपति, कोयम्बत्तूर-641006.	टोंटियाँ, एंगल वाल्व, रोक वाल्व तथा फुहारक	2000
7.	6500036807	20181224	मेसर्स श्री मुरुगन एक्वा एस एफ सं. 97/4, कलर पार्क एवन्यू, कासिपालयम रोड, नल्लूर, तिरुप्पुर-641606.	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	IS 14543: 2016
8.	6500036706	20181224	मेसर्स चक्रवर्ती प्लास्टिक इंडस्ट्रीस 12/1A-1, वडुगापालयम, आर. एस. ऊतुकुली, तिरुप्पुर-641654.	पेयजल आपूर्ति के लिए अप्लास्टिकृत पी वी सी पाइप	IS 4985: 2000

[सं- सी एम डी/13: 11]

मीनाक्षी गणेशन, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 21st January, 2019

S.O. 176.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification)

Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
1.	6500036209	20181207	M/s. Jas PVC Pipes SF No: 232,Power Hose Road, Kottaipalayam, S.S.Kulam, Coimbatore-641110.	Unplasticized PVC Pipes for Potable Water Supplies	IS 4985: 2000
2.	6500036310	20181210	M/s. Ambi Ply Panels And Doors 678/3, Kurumbanur, Dasanur Post, Mettupalayam, Coimbatore-641305.	Plywood for Concrete Shuttering Works	IS 4990: 2011
3.	6590007620	20181212	M/s. T.Palanisamy Gounder Sons & Co 266, Nethaji Road, Erode-638001.	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	IS 1417 : 2016

4.	6500036411	20181218	M/s. Sahyadri Industries Limited Plot No: KK2, Sipcot Industrial Growth Centre, Perundurai, Erode - 638052	Corrugated and semi Corrugated Asbestos Cement Sheets	IS 459: 1992
5.	6500036512	20181218	M/s. Samyak Motors Private Limited 3/34 C, Athipalayam Road, Athipalayam, Coimbatore-641110	Performance of Small Size Spark Ignition Engines for agricultural sprayers and similar applications	IS 7347: 1974
6.	6500036605	20181219	M/s. Spark Ind Plast 320,Sanganoor Main Road, Ganapathy, Coimbatore, Pin-641006	Plastics Bib Taps, Pillar Taps, Angle Valves and Stop Valves for Hot and Cold Water Services	IS 9763: 2000
7.	6500036807	20181224	M/s. Sri Murugan Aqua SF No. 97/4, Colour Park Avenue, Kasipalayam Road, Nallur, Tirupur-641606	Packaged Drinking Water (Other Than Packaged Natural Mineral Water)	IS 14543: 2016
8.	6500036706	20181224	M/s. Chakravarthy Plastic Industries 12/1A-1, Vadugapalayam, R. S. Uthukuli, Tiruppur -641654	Unplasticized PVC Pipes for Potable Water Supplies	IS 4985: 2000

[No. CMD/13:11]

MEENAKSHI GANESAN, Scientist 'F' & Head

नई दिल्ली, 21 जनवरी, 2019

का. आ. 177.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

अनुसूची

क्र. सं.	लाइसेंस सं	स्वीकृत करने की तिथि वर्ष/ माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्ष	भा मा सं (भाग/ अनुभाग) : वर्ष
1.	6500035510	20181105	मेसर्स के एन के शिवाला एक्वा इंडस्ट्रीस सं. 13, 60 फीट रोड, रामासामी गौन्डर लेऔट, वेल्लियान्गडु, तिरुप्पुर-641604.	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	IS 14543: 2016

2.	6500035611	20181111	मेसर्स फ्लोफ्लेक्स इंडस्ट्रीस एलएलपी केके3, केके4, सिपकोट इंडस्ट्रियल ग्रोथ सेंटर, पी. वी. पालयम पोस्ट, पेरुन्दुरै तालुक, ईरोड -638052.	जल आपूर्ति के लिए पॉलीएथिलीन पाइप	IS 4984: 2016
3.	6590007418	20181113	मेसर्स श्री सस्टी ज्वेलरी सं. 359, ज्वेल मेनर कॉम्प्लेक्स, राजा स्ट्रीट, कोयम्बत्तूर-641001.	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी – शुद्धता एवं मुहरांकन	IS 1417 : 2016
4.	6590007519	20181116	मेसर्स ज़वेरी ब्रॉस डायमन्ड्स एण्ड गोल्ड प्रायवेट लिमिटड पुराना सं.14, नया सं. 23, पूर्व पेरियासामी रोड, आर. एस. पुरम, कोयम्बत्तूर - 641002.	चाँदी एवं चाँदी मिश्रधातुएं, आभूषण/ शिल्पकारी – शुद्धता एवं मुहरांकन	IS 2112 : 2014
5.	6500035805	20181119	मेसर्स श्रीराम एयर कंप्रेसर्स (सी बी ई) प्रायवेट लिमिटड 287/2, पीलमेडु इंडस्ट्रियल एस्टेट, पीलमेडु, कोयम्बत्तूर - 641004.	पॉज़िटिव डिसप्लेसमेंट टाइप एयर कंप्रेसर्स आंड एक्ज़होस्टर्स	IS 5456: 2006
6.	6500035712	20181119	मेसर्स वासन्ती इंजीनियरिंग सं. 5/79-5, वेल्लानैपट्टी मुख्य सडक, वेल्लानैपट्टी, कोयम्बत्तूर – 641 048	निम्मजनीय पम्पसेट	IS 8034: 2002
7.	6500035906	20181122	मेसर्स शान्ता इंजीनियरिंग प्रोडक्ट्स एस सं. 140/2, नवा इंडियै रोड, सौडेश्वरी नगर, आवारमपायम, कोयम्बत्तूर -641006.	कृषि और पानी की आपूर्ति के उद्देश्य के लिए साफ, शीतल जल के लिए मोनोसेट पम्प	IS 9079: 2002
8.	6500036007	20181130	मेसर्स श्री पलनी आन्डवर एलॉय्स एण्ड स्टील्स प्रायवेट लिमिटड 4/173, पनियमपल्ली, तोप्पुपालयम पोस्ट, चेन्निमलै, पेरुन्दुरै के रास्ते, ईरोड-638051.	कंक्रीट प्रबलन के लिए उच्च शक्ति विरुपित इस्पात सरिए एवं तार	IS 1786: 2008
9.	6500036108	20181130	मेसर्स फेब टेक इंडस्ट्री	सुवाहय़ अग्निशामक -	IS 15683:

			एस एफ सं. 150/4/B, कोवै से सेलम बईपास के पास, नल्लागौंडमपालयम गाँव, चेंगापल्ली पोस्ट, तिरुप्पुर -638812.	कार्यकारिता और निर्माण	2006

[सं. सी एम डी/13 : 11]

मीनाक्षी गणेशन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 21st January, 2019

S.O. 177.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
1.	6500035510	20181105	M/s. KNK Sivala Aqua Industries No. 13, 60 Feet Road, Ramasamy Gounder Layout, Velliyangadu, Tirupur-641604.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543: 2016
2.	6500035611	20181111	M/s. Floflex Industries LLP KK3, KK4, SIPCOT Industrial Growth Center, P.V.Palayam Post, Perundurai Taluk, Erode-638052.	Polyethylene Pipes For Water Supply	IS 4984: 2016
3.	6590007418	20181113	M/s. Sri Sasti Jewellery No.359, Jewel Manor Complex, Raja Street, Coimbatore-641001.	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	IS 1417 : 2016
4.	6590007519	20181116	M/s. Zaveri Bros Diamonds and Gold Private Limited Old No.14, New No 23, East Periasamy Road, R. S. Puram, Coimbatore-641002.	Silver and Silver Alloys, Jewellery/Artefacts - Fineness and Marking	IS 2112 : 2014
5.	6500035805	20181119	M/s. Sriram Air Compressors (Cbe) Pvt Ltd 287/2, Peelamedu Industrial Estate, Peelamedu, Coimbatore - 641004.	Positive Displacement Type Air Compressors And Exhausters	IS 5456: 2006
6.	6500035712	20181119	M/s. Vasanthi Engineering No. 5/79-5, Vellanaipatti Main Road, Vellanaipatti,	Submersible Pumpsets	IS 8034: 2002

			Coimbatore – 641 048.		
7.	6500035906	20181122	M/s. Santha Engineering Products, S. No. 140/2, Nava India Road, Sowdeswari Nagar, Avarampalayam, Coimbatore -641006.	Electric Monoset Pumps for Clear, Cold Water for Agricultural and Water Supply Purposes	IS 9079: 2002
8.	6500036007	20181130	M/s. Sree Palani Andavar Alloys And Steels Private Limited 4/173, Paniyampalli, Thoppupalayam Post, Chennimalai, Perundurai Via, Erode-638051.	High strength deformed steel bars and wires for concrete reinforcement	IS 1786: 2008
9.	6500036108	20181130	M/s. Fab Tech Industry S.F.No.150/4/B, Near Kovai To Salem Bypass, Nallagoundampalayam Village, Chengapalli Post, Tirupur-638812.	Portable Fire Extinguishers Performance And Construction	IS 15683: 2006

[No. CMD/13:11]

MEENAKSHI GANESAN, Scientist 'F' & Head

नई दिल्ली, 21 जनवरी, 2019

का. आ. 178.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतदद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

अनुसूची

क्र. सं.	लाइसेंस सं	स्वीकृत करने की तिथि वर्ष/ माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्ष	भा मा सं (भाग/ अनुभाग) : वर्ष
1.	6500034912	20181004	मेसर्स फ्लोटेक पॉली प्रोडक्ट्स प्रायवेट लिमिटड एस एफ सं. 307 /1, कुन्नत्तुर गाँव, कडत्तुर पिरिवु, सति मुख्य सडक, कोयम्बत्तूर -641107.	जल आपूर्ति के लिए पॉलीएथिलीन पाइप	IS 4984: 2016
2.	6590007115	20181004	मेसर्स एस आर एस ज्वेलरी एण्ड वाच सेंटर ब्लॉक सं. 1, स्टॉल सं. 3 एवं 4, मार्केट, कुनूर-643102.	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी – शुद्धता एवं मुहरांकन	IS 1417 : 2016
3.	6590007216	20181004	मेसर्स वैशाली ज्वेलरी एण्ड फिनेन्स द. सं. 10/688B, मुख्य सडक,	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी – शुद्धता एवं मुहरांकन	IS 1417 : 2016

			गूडलूर-643212.		
4.	6590007317	20181016	मेसर्स वेंकटराम चेट्टियार्स तंगा मालिगै 63/1,63/2, नाचिमुतुपुदूर, पोल्लाची रोड, धारापुरम, तिरुप्पुर -638656	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी – शुद्धता एवं मुहरांकन	IS 1417 : 2016
5.	6500035106	20181025	मेसर्स निरम वाटर्स एस एफ सं. 345/2, वेट्रि विनायगर कोविल के पास, तुडियलूर रोड, सरवनमपट्टी, कोयम्बत्तूर -641035.	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	IS 14543: 2016
6.	6500035409	20181025	मेसर्स चेरन इरिगेशन एस एफ सं. 145/5, 6, 7, 10, 11 & 12, ऊतुकुली रोड, विजयामंगलम पोस्ट, विजयापुरै गाँव, पेरुन्दुरै तालुक, ईरोड-638056.	सिंचाई उपस्कर – सिंचाई लेटरल के लिए पॉलीएथिलीन पाइप	IS 12786: 1989
7.	6500035005	20181025	मेसर्स वाटरटेक इंडिया प्रायवेट लिमिटड यूनिट I 10, 60 C, सेंगोडागौन्डन पुदुर, सुलूर रोड, मुत्तुगौन्डनपुदुर (पोस्ट), कोयम्बत्तूर - 641406.	अंग्रेजी टट्टियों तथा मूत्रालयों के लिए प्लास्टिक प्रधावन टंकियाँ	IS 7231: 1994
8.	6500035207	20181026	मेसर्स पेन्टागॉन स्विचगीयर प्रायवेट लिमिटड 62/1C-4, कुप्पेपालयम, सरकार समाकुलम (के रास्ते), कोयम्बत्तूर-641107.	बाह्य रंग तेल इम्मेर्सट वितरण ट्रांसफार्मर तक 2500 kVA, 33kV : भाग 1- मिनरल तेल-निमिज्जित	IS 1180 (Part 1): 2014
9.	6500035308	20181030	मेसर्स फ्लोफ्लेक्स इंडस्ट्रीस एलएलपी केके3, केके4, सिपकोट इंडस्ट्रियल ग्रोथ सेंटर, पी. वी. पालयम पोस्ट, पेरुन्दुरै तालुक, ईरोड -638052.	पानी और मलजल के लिए इस्पात पाइप (168.3 से 2540 मि.मी. बाहरी व्यास के)	IS 3589: 2001

[सं. सी एम डी/13 : 11]

मीनाक्षी गणेशन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 21st January, 2019

S.O. 178.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
1.	6500034912	20181004	M/s. Flowtech Poly Products Private Limited Unit II SF No. 307 /1, Kunnathur Village, Kadathur Pirivu, Sathy Main Road, Coimbatore-641107.	Polyethylene Pipes For Water Supply	IS 4984: 2016
2.	6590007115	20181004	M/s. S.R.S. Jewellery and Watch Centre Block No. 1, Stall No. 3 & 4, Market Coonoor-643102.	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	IS 1417 : 2016
3.	6590007216	20181004	M/s. Vyshali Jewellery and Finance D. No. 10/688B, Main Road, Gudalur-643212.	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	IS 1417 : 2016
4.	6590007317	20181016	M/s. Venkatram Chettiars Thangha Maligai 63/1,63/2,Nachimuthupudur, Pollachi Road, Dharapuram, Tirupur-638656	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	IS 1417 : 2016
5.	6500035106	20181025	M/s. Niram Waters SF No. 345/2, Near Vetri Vinayagar Kovil, Thudiyalur Road, Saravanampatti Coimbatore-641035.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543: 2016
6.	6500035409	20181025	M/s. Cherran Irrigation SF No. 145/5, 6, 7, 10, 11 & 12, Uthukuli Road, Vijayamangalam (P.O.), Vijayapurai (Village), Perundurai (Tk), Erode-638056.	Irrigation Equipment-Polyethylene Pipes for Irrigation Lateral	IS 12786: 1989
7.	6500035005	20181025	M/s. Watertec India Pvt Ltd Unit I 10, 60 C, Sengodagounden Pudur, Sulur Road, Muthugoundenpudur (P.O.), Coimbatore - 641406.	Plastic Flushing Cisterns For Water- Closets And Urinals	IS 7231: 1994
8.	6500035207	20181026	M/s. Pentagaon Switchgear Private Limited 62/1c-4, Kuppepalayam, Sarkar Samakulam Via, Coimbatore-641107.	Outdoor type Oil Immersed distribution transformers up to and including 2500 kVA, 33kV: Part 1: Mineral Oil Immersed	IS 1180 (Part 1): 2014
9.	6500035308	20181030	M/s. Floflex Industries LLP	Steel Pipes for Water and	IS 3589:

			KK3, KK4, SIPCOT Industrial Growth Center, P.V.Palayam Post, Perundurai Taluk, Erode-638052.	Sewage (168.3 to 2540 mm Outside Diameter)	2001

[No. CMD/13:11]
MEENAKSHI GANESAN, Scientist 'F' & Head

नई दिल्ली, 21 जनवरी, 2019

का. आ. 179.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियमन 5 के उपविनियमन (6) के अनुसरण में भारतीय मानक ब्यूरो एतदद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/ स्थगित कर दिया गया है:-

अनुसूची

क्र. सं.	लाइसेंस सं सी एम/ एल-	लाइसेंसधारी का नाम व पता	स्थगित किए गए/ रद्द किए गए लाइसेंस के अंतर्गत वस्तु/ प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
अक्टूबर 2018 - शून्य				

[सं. सी एम डी/13 : 13]

मीनाक्षी गणेशन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 21st January, 2019

S.O. 179.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/ suspended with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/ Process with relevant Indian Standard covered by the licence cancelled/ suspension	Date of Cancellation
OCTOBER 2018 – NIL				

[No. CMD/13: 13]

MEENAKSHI GANESAN, Scientist 'F' & Head

नई दिल्ली, 21 जनवरी, 2019

का. आ. 180.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियमन 5 के उपविनियमन (6) के अनुसरण में भारतीय मानक ब्यूरो एतदद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/ स्थगित कर दिया गया है:-

अनुसूची

क्र. सं.	लाइसेंस सं सी एम/ एल-	लाइसेंसधारी का नाम व पता	स्थगित किए गए/ रद्द किए गए लाइसेंस के अंतर्गत वस्तु/ प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
नवंबर 2018 - शून्य				

[सं. सी एम डी/13 : 13]

मीनाक्षी गणेशन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 21st January, 2019

S.O. 180.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/ suspended with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/ Process with relevant Indian Standard covered by the licence cancelled/ suspension	Date of Cancellation
NOVEMBER 2018 - NIL				

[No. CMD/13: 13]

MEENAKSHI GANESAN, Scientist 'F' & Head

नई दिल्ली, 21 जनवरी, 2019

का. आ. 181.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियमन 5 के उपविनियमन (6) के अनुसरण में भारतीय मानक ब्यूरो एतदद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/ स्थगित कर दिया गया है:-

अनुसूची

क्र. सं.	लाइसेंस सं सी एम/ एल-	लाइसेंसधारी का नाम व पता	स्थगित किए गए/ रद्द किए गए लाइसेंस के अंतर्गत वस्तु/ प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
दिसंबर 2018 - शून्य				

[सं. सी एम डी/13 : 13]

मीनाक्षी गणेशन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 21st January, 2019

S. O. 181.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/ suspended with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/ Process with relevant Indian Standard covered by the licence cancelled/ suspension	Date of Cancellation
DECEMBER 2018 - NIL				

[No. CMD/13: 13]

MEENAKSHI GANESAN, Scientist 'F' & Head

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 जनवरी, 2019

का. आ. 182.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, एल्गिन मिल्स कंपनी लिमिटेड कानपुर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.12.2018 को प्राप्त हुए थे।

[सं. एल-42012/12/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th January, 2019

S.O. 182.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Elgin Mills Company Ltd. Kanpur, and Others, and their workmen which were received by the Central Government on 26.12.18.

[No. L-42012/12/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT/LOK ADALAT, KANPUR

Industrial Dispute No. 39 of 2013

Between:

Shri Ram Kripal,
S/O Late Ayodhya Prasad,
C/O Shri Asit kumar Singh, General Secretary,
Hind Mazdoor Sabha, C-338, Barra-6,
Kanpur (U.P.)-208027

Vs

1. The General Manager,
The Elgin Mills Co. Ltd.,
Mill No. 2, Cooperganj,
Kanpur (U.P.)

2. The General Manager,
British India Corporation Ltd.,
Parwati Bagla Road, Civil Lines,
Kanpur(U.P.)-208001

AWARD

1. Central Government, Mol, vide notification no.L-42012/12/2013-IR (DU) dated 24-05-2013, has referred the following dispute for adjudication to this tribunal.

2. "Whether the action of the management of the Elgin Mills Company Ltd., Kanpur, A Unit of British India Corporation Ltd., Kanpur in terminating the services of Shri Ram Kripal, S/o Late Ayodhya Prasad workman w.e.f. 01.03.2001 by way of his premature retirement is just & legal? What relief the workman concerned is entitled to?"

3. In the instant case a reference was referred to Central Government Industrial Tribunal cum Labor Court, Kanpur, whereupon notice to the claimant was issued under registered post by CGIT Kanpur for filing his claim in the case.

4. Worker Ram Kripal has filed his claim statement stating that he was appointed as sepoy in 1978 in M/s. the Elgin Mill company Ltd., Kanpur in watch & ward department and had deposited his educational and caste certificate

wherein his date of birth was mentioned as 4-04-1949. During his service period he got injured on 23-03-1998 in an accident. A report was sent to state Employees Insurance Corporation on form 16 wherein his age was mentioned as 50 years and he was superannuated on 01-03-2001 illegally and it was requested that order passed by management for superannuating him on 1-03-2001 be declared illegal and he be reinstated and be paid back wages.

5. Management has filed his reply refuting the claim of worker and it is alleged that this claim is filed after 13 years of his superannuation. It is further alleged that it is pertinent to mention that Elgin Mills Company Limited, Kanpur has been winded up by the orders of Hon'ble High Court, Allahabad and ordered to appoint Official Liquidator vide order dated 25-10-2010 and entire assets and properties are in the custody and control of the Official Liquidator. Under 446 of the Company's Act when a winding up order has been made or the Official Liquidator has been appointed as Provisional Liquidator, no suit or other legal proceedings shall be commenced or if pending on the date of winding up order, shall be proceeded with against the company, except by leave of the Hon'ble High Court. In view of the above, this Hon'ble Tribunal has no jurisdiction to pass any order against the company in the above case, without leave of the Company Judge of Hon'ble High Court, Allahabad. Thereafter worker has filed rejoinder in which nothing new has been added.

6. Management during pendency of this dispute has moved application 13/1 wherein it is alleged that as the company has been winded up and liquidator has been appointed by orders of Hon'ble High Court this jurisdiction of the tribunal is ceased and this case cannot proceed after appointment of official liquidator Management has also filed 5 documents through list 12/1. Worker has filed his objection 14/1 denying the fact alleged by management in application.

7. I have heard parties' representative and perused the record.

8. Management has filed copy of order dated 25-10-10 passed Hon'ble High Court in company petition no. 24/2009 M/s. Kotak Mahindra Bank Ltd. v/s M/s. Elgin Company Ltd. which is paper no 12/7. A perusal of order reveals that Hon'ble High Court has passed order for winding up the Elgin Ltd. Company and appointment of official Liquidator.

9. In this connection it is also important to point out that this industrial dispute has been registered on reference issued by Central Government on 24.05.13 that is much after the order passed by Hon'ble High Court for winding up the company and appointment of official liquidator. This fact is not denied by worker therefore it appears to be admitted to the worker.

10. Section 446(1) states that when a winding up order has been made or the or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

11. As discussed above this dispute is referred much after the order of Hon'ble High Court for winding up of company and appointment of official liquidator. Therefore this dispute/case cannot be proceeded in view of provisions mentioned above under section 446(1) of company act.

12. As such this tribunal is not competent to decide this dispute and pass any award.

13. Reference is answered accordingly.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 183.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स प्रबंधन नीपको रंगनाडी हाइड्रो इलेक्ट्रिक प्लांट, लोअर सुबनसिरी अरुणाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 05/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42011/15/2017- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 183.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2017) of the Central Government Industrial Tribunal-cum-Labour Court Guwahati as shown in the Annexure, in the Industrial dispute between the employers in relation to the Management of NEEPCO Ranganadi Hydro Electric Plant, Lower Subansiri Arunachal Pradesh, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/15/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B. Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 05 of 2017

In the matter of an Industrial Dispute between :-

The Management of NEEPCO Ranganadi Hydro Electric Plant,
Lower Subansiri, Arunachal Pradesh. … O.P/Management

Vrs.

The President, All Local & Non-Tribal 89 days Basis Employees of RHEP Group,
RHEP NEEPCO Arunachal Pradesh. …Claimant/Workmen

APPEARANCES :

For the Management : Mr.J.Nandy, Sr. Manager (HR).
Mr. N.K.Meitei, Sr. Manager (HR).

For the Workman. : Mr.Likha Ashok, Union President.

Date of Award : 10.08.2018

AWARD

1. This Industrial Dispute between workmen represented by the President of Local & Non-Tribal "89 days basis employees" of RHEP, NEEPCO Ltd., Yazali (A.P.) and the Management NEEPCO (RHEP),Yazali, (A.P.) was referred to this Tribunal by the Central Government vide Notification dated 09/05/2017 with the following schedule :

"Whether the action of management of NEEPCO Ranganadi Hydro Electric plant, Yazali, Lower Subansiri, Arunachal Pradesh-791119 and its corporate office Brookland Compound Lower New Colony, Shillong-793003 is justified in not regularizing the services of employees of all local & Non-Tribal 89 days basis of RHEP group who are providing their services since 01.09.1999 as casual employees even when there is a backlog vacancy available. IF not, what relief the employees of 89 days basis of RHEP Group are entitled to from the management of NEEPCO, Ranganandi Hydro Electric Plant, Yazali Lower subansiri, Arunachal Pradesh and its corporate office at shillong."

2. On receipt of the reference, notices were sent to the parties. The parties appeared and submitted their written statements.

3. The case of the claimant/workmen was that in the year 1990, the concerned workmen were appointed in Muster Roll category and subsequently they were continued to be engaged as contract labours in NEEPCO(RHEP), Yazali. The list of the workers have been enclosed as Annexure-I & II which revealed that 98 numbers of workmen were in the said category. After having served for a very long time starting from the year 1990, the concerned workmen placed their grievances to the management and prayed for regularization of their jobs and on the basis of their representation some discussions were held with the management. A copy of the memorandum of discussion with the management has been annexed as Annexure-III. It was stated that after repeated representations the management finally settled their grievances and all 98 numbers of contract labours involved in this reference were placed under "89 days basis employees" along with certain facilities. It had also been stated that on the basis of the aforesaid engagement they have been discharging their duties sincerely to the satisfaction of all concerned. The workmen have been demanding for regularization of their jobs and in this respect discussion were held between the management and the Employees Union. Thereafter the

management of NEEPCO conducted interview and exclusively issued call letters to some contract workers on the promise to regularize their jobs. That on 01.09.1999 the workmen have been appointed as "89 days basis employees" with pay and other allowance but they had been deprived of other service benefits. In spite of repeated demands, the management did not regularize their jobs. The grievance was referred to Assistant Labour Commissioner (Central), Guwahati. Conciliation proceeding was held but the effort of conciliation failed. After aforesaid conciliation failed the failure report was forwarded to the Ministry whereupon the present reference was sent to this Tribunal for adjudication.

4. On receipt of the copy of the claim statement the management submitted its written statement wherein it was stated that for the purpose of installation of Pare Hydro Electric Project under NEEPCO and considering the exigency of the construction work at different places some persons were engaged on ad-hoc/casual/muster roll etc. basis during the period from 1988 to 2005 for carrying out various works. The engagement of those workers were continuing by giving extension from time to time and ultimately considering their long service in NEEPCO as casual workers they were engaged on "89 days basis" with effect from 1999 after working out the specific requirement of the works in project. Based on the requirement of work of the project such workers were engaged for a period of 89 days and after the expiry of 89 days they were further engaged for another period of 89 days. This was going on since many years. It was also stated that based on the discussion held between the management and the representative of those 89 days workers the Board of Directors of NEEPCO in its meeting held on 02.09.2016 approved categorization of their engagement status as work-charge employees subject to the individual undertaking to be submitted by each worker. It was also stated that the pay, allowance and other benefits were extended to them as were eligible to work-charge workers. It was also stated that the management extended benefit of basic pay, DA and other allowance to the concerned workers and during the year 2016 all of them were given the status of work-charge employees. According to the management the benefits including pay and other allowances received by the concerned workmen are almost as that of the regular employees of the similar rank. The management further stated that the NEEPCO was unable to make any regularization of service except through recruitment process as per Company's Recruitment Rules and Regulation. It was further stated that such automatic regularization of work-charge employees would be in contravention of Hon'ble Supreme Court's verdict. Since NEEPCO is a Government undertaking equal opportunity of employment has to be given to all eligible candidates on the basis principles of public employment.

5. The management also submitted Addl. Written statement wherein they claimed that at present there is no 89 days personnel in the Company and they have been categorized as work-charge employees. It has also been stated that pay, allowances and other benefits of work-charge employees are almost at par with the regular employees and hence their grievances are otherwise met. In view of the development of the aforesaid facts the management prayed for rejection of the demand raised by the workmen.

6. Three witnesses were examined on behalf of the workmen side. Management side examined one witness named Sri N.K.Meitei.

7. Workmen witness No.1 Shri Likha Ashok, President on behalf of Employees Union stated that along with 97 workers he was also working in NEEPCO as "89 days" employees. He further deposed that initially in the year 1989 the workmen were appointed as Muster Roll/Casual/Contract Labour and they were paid wages on daily rated basis. It was also stated that during the period of Muster Roll the management issued call letter to all Muster Roll Employees on 21.5.1989 to face interview for the purpose of regularization of their jobs. But the interview was ultimately not conducted and in lieu of it the management appointed the concerned workers as 89 days employees on 01.09.1999. It was also stated that some of the Casual labours/Muster Roll employees were in the mean time regularized by the management in their jobs. He also stated that the movement for the regularization of 89 days based employees started in the year 2008 under the banner of Employees Union, Worker Union, Labour Union and NEEPCO Tribal Employees Welfare Association, RHEP, Yazali. He further stated that after long time the management ultimately engaged the workmen as work-charge employees. He further stated that their demand for regularization of service was genuine which was ignored by the management. In his further examination-in-chief the workmen witness No.1 exhibited documents namely Exhibit-1 to 13 which were admitted as exhibits on admission. Exhibit-15 and 16 are copies of Police Verification and Blood Report and Exhibit-17 is the copy of death certificate in respect of Tassar Taye which was also exhibited without any objection by the management. Exhibit-18 is a letter written by the Ministry of Power to the Chairman & Managing Director, NEEPCO. During cross-examination he admitted that he started to work in RHEP, NEEPCO originally as Khalasi from the year 1993 and at present, i.e. at the time of his cross-examination, he was working as Operator and was a work-charge employee. He further admitted that as a work-charge employee he also received annual increment and that he has been getting other benefits. During his cross-examination he agreed to the suggestion made by the management that some 89 days employees were also regularly appointed by the management through Company's Recruitment Process according to the Company's Rules. The witness also admitted that the work-charged employees are now getting gratuity, pension and other benefits and the the concerned workmen were made work charged employees from October, 2016.

8. The workmen Witness No.2 Sri Taba Teshi submitted his examination-in-chief on Affidavit simply stating that the claim made by the "89 days basis employees" are true and they have been giving service for last 22-27 years. During cross-examination he admitted that he is a regular employee in RHEP, NEEPCO since the year 1996 and that he has come to depose in this matter on the request of the Union because he along with others are members of the same Trade Union. He also admitted that he has no personal demand on the matter. The evidence of Workmen witness No.3 is more or less similar to that of Workmen witness No.2. During cross-examination he admitted that he is an employee of NEEPCO. He stated that he knew that there were a provision of engaging 89 days employees who were later made work-charge employees.

9. The only witness examined for the management side stated that the concerned workmen who were earlier engaged on each occasion for 89 days and who have since been converted to work-charge employees, have been demanding for regularization in their services. He further stated that according to his understanding there cannot be any automatic regularization in any public establishment. He also stated that if any eligible workman, who is not a regular employee of the Company, participates in a regular recruitment process and qualifies in the process, the management always provides regular employment to such employee. He further stated that since NEEPCO is a Public Corporation owned by Government of India, basic public policy of employment is applicable to the Company and there cannot be any automatic regularization without public advertisement. During cross-examination he denied the suggestion that management unilaterally and with a bias regularized certain section of other employees ignoring others. He further denied the suggestion that in the year 1997 all the concerned employees were deprived and only those work-charged employees like LDC and above were regularized. The witness however admitted that in the year 1998 the concerned workers were called to shillong to take a test including written and type test. The witness here clarified that after this test they were engaged as 89 days employees. He also admitted that in the calling letter of examination which was held in the year 1998 it was mentioned that the examination was for regularization of service. The witness also agreed that if there is existing vacancy the management will allow all the concerned workmen to appear in the regular test subject to their eligibility and suitability. The witness however denied that the workmen ought to have been made work-charge employees from much earlier.

10. The following facts in this matter are not in dispute. Admittedly, the concerned workmen were originally engaged as casual/contract labour/muster roll employees and later they were made "89 days basis" employees. Ultimately they were made work-charge employees. On the question of regularization the workmen claimed that they ought to have been regularized whereas the management took the stand that there could not be any automatic regularization in any public employment. In this connection W.W No. 1 stated the following during his cross-examination:- *"Earlier we were initially engaged for 89 days and then with a gap of 1/ 2 days we were again engaged for 89 days. This process continued till we were made work-charge employees. It is a fact that some of the employees who started working as 89 days employees with one or two days gap have been regularly appointed by the company through proper recruitment process according to the company's rules. It is a fact that now work-charge employees are also getting gratuity, pension and other retirel benefits. We have been made work-charge employees from October, 2016."* From the aforesaid it was evident that the management had already made the concerned workmen work-charge employees with all related benefits. In regard to regularization it was admitted by the workmen that some of the "89 days" employees who were regularized got regular appointment through proper recruitment process as per Company' Rules. It is an admitted position in law that in public employment there cannot be any automatic regularization without following the usual recruitment process. The Company involved in this reference is a Government undertaking. In this connection the following statement of the M.W No.1 may be quoted:- *"I agree if there is vacancy the management will allow all the concerned workmen to appear in the regular test subject to their eligibility and suitability."*

11. In view of the above it appeared to me that the action of the management in not regularizing the services of the concerned employees automatically was not unjustified. The reference therefore, stands disposed with a no relief award.

Given under the hand and seal of this Tribunal on this day of 10th August, 2018.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 184.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मुख्य महाप्रबंधक, विज्ञान उद्योग लिमिटेड और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 25/2017 & 38/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-14011/10/2017- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 184.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 25/2017 & 38/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to the Chief General Manager, Vignyan Industries Limited and others, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-14011/10/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03rd DEC, 2018

PRESENT : (MURALIDHAR PRADHAN)

I/C PRESIDING OFFICER

I Party	**II Party**
The President, Karnataka Coffee Curing & General Workers Union, Tamil Colony, Chikmagalur – 577 101 Karnataka.	1. The Chief General Manager, Vignyan Industries Limited, Tarikere – 577 228. Karnataka 2. The General Manager (IR), Bharat Earth Movers Limited, BEML Soudha, Bangalore – 560 027.

AWARD

1. The Central Government vide Order No.L-14011/10/2017–IR (DU) dated 21.08.2017 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

'Whether the demand of Karnatak Coffee Curing & General Workers Union (R) Chikmaglur for regularization of the services of Sh. Mohd. Fayaz and 27 Others (As per Annexure "E") with the management of M/s. Vignyan Industries Ltd. TarikereChikmaglur (a subsidiary of Bharath Earth Movers Ltd.) is legal and justified? If not, to what relief the said workmen are entitled to?'

2. Pursuant to the above reference this Tribunal registered the case as CR No. 25/2017 and CR 38/2017 and issued notices to the parties. In obedience to the notice the I Party appeared through Advocate Mr.Muralidhara but the II Party did not appear. On 29.11.2018 the I Party filed a memo along with some documents stating therein to dispose of both the dispute referred above, as the I Party is not interested to pursue the dispute. The I Party wants to not press the above schedule of reference.

3. Perused the documents along with the memo and heard the advocate for the I Party along with the president of the Union of the I Party. The hearing was taken up in absence of the II Party as the I Party does not want to Press the dispute.

4. As per the memo filed by the I Party the matter has already been settled by the parties outside the Court and the II Party has already given appointments to 28 members of the Union annexed in the reference. The I Party is not willing to pursue the dispute and not pressing the dispute to raise further. In view of the memo filed by the I Party there is no need to linger the dispute further. As the dispute has already been settled. Hence, the case is closed and as such this NIL Award is passed. Hence, the following Award is passed:-

AWARD

Reference is dismissed as not pressed. No costs.

(Dictated, transcribed, corrected and signed by me on 03rd December, 2018)

MURALIDHAR PRADHAN, I/C Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 185.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुडकी और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 119/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42012/67/2017- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 185.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 119/2018) of the Central Government Industrial Tribunal-cum-Labour Court 1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and others, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/67/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 119/2018

Shri Sachin Upadhyay & others,
C/o B-132, Brij Vihar,
Ghaziabad,
Uttar Pradesh – 201 001 …Workmen

Versus

(i) The Managing Director,
Delhi Metro Rail Corporation
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road, New Delhi – 110 001

(ii) M/s. NCES, SCO No.16, 17, 18
Shiv Narain Complex,
Sikanderpur Ghosi,
(Adjacent of City Court), Tehsil & Distt,
Gurgaon, Haryana …Management

AWARD

In the present case, a reference was received vide letter No.L-42012/67/2017-IR(DU) dated 30.01.2018 under clause (d) of sub-section (1) and Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial disputes, terms of which are as under:

Whether the demands of the workmen (mentioned in Annexure A & B) for wages and other benefits of service conditions at par with the regular employees of DMRC, is legal and/or justified, regularization of service and from which date are justified legally and what directions are necessary in the case, whether the action of the management of M/s NCES, the contractor working for DMRC in charging security money from the workmen (mentioned in Annexure A and B) and charges for renewal of identity card is legal and/or justified and what directions are required in the case?'

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute.

Despite directions so given, Shri Sachin Upadhyay & others, the workmen, opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workmen as well as the management. Neither the postal article, referred above, was received back undelivered nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workmen. Despite service of the notice, the workmen opted to abstain from the proceedings. No claim statement was filed on their behalf. Thus, it is clear that the workmen are not interested in adjudication of the reference on merits.

4. Since the workmen have neither put in their appearance nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar Shri Sachin Upadhyay & others, the workmen from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : January 8, 2019

A. C. DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 186.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 127/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42011/37/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 186.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 127/2012) of the Central Government Industrial Tribunal-cum-Labour Court -1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/37/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 127/2012

Shri Sanjeev Kumar,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/37/2012-IR(DU) dated 5th October, 2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Sanjeev Kumar S/o. Badlu Ram, Helper despite rendering service for more than 18 years continuously is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Sanjeev Kumar filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Maali) on muster roll basis w.e.f. March, 1993 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled, consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager on 2/3/1993. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20/2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant, being 6^{th} standard pass, does not possess the minimum essential qualifications of 10^{th} standard pass for selection even against an entry level Group D post in the regular employment of the Management. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified. Prayer has been made for dismissal of the claim petition.

4. Vide order dated 23/04/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1. In cross examination he stated that he is educated upto 7^{th} standard and was engaged as Helper without any advertisement. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualification has been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Helper from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at

Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Helper on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1993 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant on contract/casual basis for doing work of Maali, is duly admitted by the Management as per its pleadings and evidence adduced on record. It is not in dispute that the workman/claimant is still working on contractual engagement under Y-1 category and is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20/2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/ regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 & 13/6/1995 (Ex.MW1/5 colly) issued by University of Roorki shows that for the post of Survey Tindal & Maali in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate (having knowledge of reading & writing) with knowledge of keeping the equipments/furniture etc.. It shows that the workman/claimant who was engaged in the year 1993 was eligible to be considered for the said post of Helper and at that time it was not required that the incumbent should be 10^{th} class pass, as has been pleaded by the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were/are

similarly placed with the claimant on the issue of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) being all illiterate are few of them and they have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman who is 7th standard pass is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Sanjeev Kumar, Helper despite rendering service for more than 25 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Helper.

15) Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 05/10/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Mali in the regular pay-scale existing to the said post from 05/10/2012.with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Helper w.e.f. 05/10/2012 in the regular pay-scale of Helper, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 187.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 171/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42012/62/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 187.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/2012) of the Central Government Industrial Tribunal-cum-Labour Court -1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/62/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 171/2012

Smt. Raj Kumari,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42012/62/2012/IR(DU) dated 08.11.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Raj Kumar (sic Raj Kumari) w/o. Shri Halu Ram, despite rendering service for more than 20 years continuously is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Raj Kumari filed her statement of claim, with the averments that she was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Sweeper) on muster roll basis we.f. July, 1992 and continues to work in the same capacity since then. The workman requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager on 4/2/1992. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommdation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged

that the claimant (who is only 7th class pass) does not possess the minimum essential qualifications of 10th standard pass for selection even against an entry level Group D/MTS post in the regular employment of the Management and as such the workman is not eligible to become a permanent & regular employee of the Management. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 11/7/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of her case examined herself as WW1 who tendered her affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination she admitted that she is 7th standard pass and was engaged as Safai Karamchari without any advertisement. She also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 261 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. She also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, she had also applied for the post of Safai Karamchari, interview letter was issued and she was called for an interview but her name was not in the merit list prepared by the University.. She also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption. She denied the suggestion that she is not entitled to get wages in a regular pay scale as a matter of right.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pol. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Helper on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1992 and she has been discharging duties as assigned to her. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimants as part time for doing intermittent nature of work and/or for cleaning the bank premises is duly admitted by the Management as per its pleadings and evidence adduced on record. It is undisputed fact that the workman/claimant still working on contractual engagement under Y-1 category and is being paid fixed monthly emoluments in respect of her services, that is to say that she is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he/she is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 (Ex.MW1/5) issued by University of Roorki shows that for the post of Helper/Peon in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be 8th class pass. The said notification was issued after engagement/employment of the who was engaged in the year 1992 and there is nothing on record to suggest that at the time when the claimant was engaged/employed, the requirement of education of 8th class pass was desirable. The claimant/workman is still under the employment of the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant on the issue of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) are few of them and they have been placed in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work. To my mind, the claimant is entitled to get same pay/wages on the cardinal principle of "equal pay for equal work"

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Ms. Raj Kumari w/o. Shri Hallu Ram, despite rendering continuous service of about 25 years is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Helper.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that she had made any written representation or demand/legal letter to the Management for regularization of her services, nor she has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 8/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of

Helper in the regular pay-scale existing to the said post w.e.f.8/11/2012, with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 8/11/2012 in the regular pay-scale of Helper/Group-D employee, with all consequential benefits and arrears of the same be also paid to her. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 188.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 170/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42012/60/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 188.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 170/2012) of the Central Government Industrial Tribunal-cum-Labour Court -1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/60/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1. : NEW DELHI

ID No. 170/2012

Shri Suresh,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42012/60/2012-IR(DU) dated 8th November, 2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

'Whether action of management of IIT Roorkee in not regularizing the workman Shri Suresh s/o. Shri Kewal Ram, despite rendering service for more than 19 years continuously is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Suresh filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Maali) on muster roll basis we.f. July, 1993 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager on 5/7/1993. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20/2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant, who had shown his qualification as 5th class at the time of registration in Y Pool in October, 1993 but had claimed himself to be 8th standard passed before the Conciliation Officer, does not possess the minimum essential qualifications of 10th standard pass for selection even against an entry level Group D post in the regular employment of the Management. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified. Prayer has been made for dismissal of the claim petition.

4. Vide order dated 8/10/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination he stated that he is 5th standard pass and was engaged as Maali without any advertisement. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Helper (Maali on daily wage/ casual basis by the erstwhile University of Roorkee, has been

under the employment of the Management since the year 1993 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant on contract/casual basis for doing the work of Maali, is duly admitted by the Management as per its pleadings and evidence adduced on record. It is not in dispute that the workman/claimant is still working on contractual engagement under Y-1 category and is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20/2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/ regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 (Ex.MW1/5 colly) issued by University of Roorki shows that for the post of Maali in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate (having knowledge of reading & writing) with two years experience of the work of Mali. It shows that the workman/claimant who was engaged in the year 1993 was eligible to be considered for the said post of Mali and at that time it was not required that the incumbent should be 10^{th} class pass, as has been pleaded by the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were/are similarly placed with the claimant on the issue

of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) being all illiterate are few of them and they have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman who is 5th standard pass is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Suresh, Helper (Mali) despite rendering service for more than 25 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

14) Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 8/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Mali in the regular pay-scale existing to the said post from 8/11/2012 with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 8/11/2012 in the regular pay-scale of Helper (Maali), with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 189.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 126/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42011/118/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 189.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 126/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee and others, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/118/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 126/2012

Shri Ramesh,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/118/2012/IR(DU) dated 5th/9th October, 2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of Indian Institute of Technology Roorkee for not regularizing the workman Shri Ramesh, **Beldar** is justified ? If not, what relief the said workman is entitled to ?'

2. Both parties were put to notice and workman Ramesh filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Beldar on muster roll basis we.f. November, 1988 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager and the claimant was assigned the work of Beldar. Consequent upon agitation of such casual daily wage workers in September 1988, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including

the claimant. It is also alleged that the claimant (who is an illiterate) was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 5/6/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination he deposed that he is 5th pass and was engaged as daily wager without any advertisement. He clarified that an incumbent for the post of Beldar should have been 5th standard pass. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1988 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant Ramesh, having been working continuously since the year 1988 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for

regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 24/8/1994 & 27/3/1997 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Safai Karmchari/ Maali in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate (having knowledge of reading & writing) with two years experience of the said work. The job of the Beldar which work the claimant has been performing, can be equated with the work of Safai Karamchari/Maali. The claimant is 5the class pass, It shows that the workman/claimant who was engaged in the year 1988 was eligible to be considered for the said post of Safai Karamchari/Beldar and at that time it was not required that the incumbent should be 10^{th} class pass for selection as MTS worker, as has been pleaded by the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Ram Prakat s/o. Shri Punnoo, Mali despite rendering service for more than 35 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

14) Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 5^{th} October, 2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of

regularization to the post of Helper/Beldar in the regular pay-scale existing to the said post from 5th October, 2012 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 5/10/2012 in the regular pay-scale of Helper, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 190.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 173/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42012/263/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 190.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 173/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/263/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 173/2012

Smt. Rachna Devi,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42012/263/2012/IR(DU) dated 08.11.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

'Whether action of management of IIT Roorkee in not regularizing the workman Smt. Rachna w/o. Shri Kunwar Singh, despite rendering service for more than 20 years continuously is justified ? If not, to what relief the said workman is entitled to ?'

2. Both parties were put to notice and workman Rachna filed her statement of claim, with the averments that she was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Sweeper) on muster roll basis we.f. July, 1992 and continues to work in the same capacity since then. The workman requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager on 4/2/1992. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommdation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant (who is only 7th class pass) does not possess the minimum essential qualifications of 10th standard pass for selection even against an entry level Group D/MTS post in the regular employment of the Management and as such the workman is not eligible to become a permanent & regular employee of the Management. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 11/7/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of her case examined herself as WW1 who tendered her affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination she admitted that she is 4th standard pass and was engaged as Safai Karamchari without any advertisement. She also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. She also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, she had also applied for the post of Safai Karamchari, interview letter was issued and she was called for an interview but her name was not in the merit list prepared by the University.. She also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption. She denied the suggestion that she is not entitled to get wages in a regular pay scale as a matter of right.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pol. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Helper on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the

employment of the Management since the year 1992 and she has been discharging duties as assigned to her. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimants as part time for doing intermittent nature of work and/or for cleaning the bank premises is duly admitted by the Management as per its pleadings and evidence adduced on record. It is undisputed fact that the workman/claimant still working on contractual engagement under Y-1 category and is being paid fixed monthly emoluments in respect of her services, that is to say that she is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he/she is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 (Ex.MW1/5) issued by University of Roorki shows that for the post of Helper/Peon in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be 8th class pass. The said notification was issued after engagement/employment of the who was engaged in the year 1992 and there is nothing on record to suggest that at the time when the claimant was engaged/employed, the requirement of education of 8th class pass was desirable. The claimant/workman is still under the employment of the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant on the issue of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) are few of them and they have been placed in the regular pay-scale.

Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work. To my mind, the claimant is entitled to get same pay/wages on the cardinal principle of "equal pay for equal work"

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Ms. Raj Kumari w/o. Shri Hallu Ram, despite rendering continuous service of about 25 years is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Helper (Sweeper).

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that she had made any written representation or demand/legal letter to the Management for regularization of her services, nor she has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 8/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Helper in the regular pay-scale existing to the said post w.e.f.8/11/2012, with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 8/11/2012 in the regular pay-scale of Helper/Group-D employee, with all consequential benefits and arrears of the same be also paid to her. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 191.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 172/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42012/59/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 191.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 172/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/59/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 172/2012

Ms. Sangeeta Khati,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42012/59/2012-IR(DU) dated 8/11/2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

'Whether action of management of IIT Roorkee in not regularizing the workman despite rendering for more than 22 years continuously is justified ? If not, to what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Sangeeta Khati filed her statement of claim, with the averments that she was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Technical Assistant on muster roll basis w.e.f August, 1990 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management on 9/9/1991 on contract basis for a fixed term of one year as Technical Assistant "B" in the Electronics & Communication Engg. Department. Consequent upon agitation of such casual daily wage workers in 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. The claimant had applied for the post of Routine clerk against advertisement dated 21/11/1994 and for the post of Laboratory Assistant. She was called for interview but was not finally selected/short listed due to inadequate experience in the relevant field. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 11/7/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/2. In cross examination she deposed that she is Science Graduate besides a post graduate diploma in computers. She admitted that she was engaged as technical assistant without any advertisement. She clarified that an incumbent for the post of Technical Assistant should be science graduate. She also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. She also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, she had also applied for the post of clerk and Lab.Assistant and that she was interviewed. She showed her ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. She admitted having applied for the post of clerk as well as Lab Assistant against the advertisement issued by the Management but was not short listed/selected. She also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties of Pump Operator. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant having been working continuously since the year 1987 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or**

otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that pursuant to agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 2111/1994 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Junior Technical Assistant in the pay-scale of Rs.1400-2600/-, eligibility criteria of education/experience was that the incumbent should be B.Sc. or Diploma (3 Years Course) with three years experience in the said field/line. The claimant is Science Graduate. It shows that the workman/claimant who was engaged in the year 1990 and is working as Technical Assistant since then, has got requisite experience by now. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that Vinod Kumar s/o. Madho Ram (at Sl.No.176), having educational qualification of 12th standard & Praveen Kumar s/o. SS Ahuja having Diploma (Mech.) having been regularized/appointed for the post of Lab Assistants and they are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who is similarly placed and is doing the same/equal work. This action of the Management is discriminatory and not justified.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Sangeeta Khati despite rendering service for more than 28 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Pump Operator.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 8/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Technical Assistant in the regular pay-scale existing to the said post, w.e.f. 8/11/2012 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 8/11/2012 in the regular pay-scale of Telephone Operator, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 192.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 21/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42011/122/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 192.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2013) of the Central Government Industrial Tribunal-cum-Labour Court -1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/122/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 21/2013

Shri Sita Ram Semwal,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/122/2012/IR(DU) dated 7/1/2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Sita Ram Semwal S/o. Shri Seesh Ram, Chowkidar despite rendering for more than 24 years is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Sita Ram Semwal filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Watch & Ward) on muster roll basis we.f. April, 1988 and continues to work in the same capacity since then. He

requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management in April, 1988 as unskilled casual daily wage worker. Consequent upon agitation of such casual daily wage workers in 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. The claimant had applied for the post of Library Assistant against advertisement dated 20/9/1999; for the post of Peon against posts advertised on 22/3/97 and against the post of Worker Grade-C in Mechanical & Indl.Engg. Department against advertisement dated 27/8/1996.. He was called for interview but was not selected/short listed due to inadequate experience in the relevant field. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 10/9/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/3. In cross examination he deposed that he is 8th standard pass. He admitted that he was engaged as Helper on daily wage basis without any advertisement. He clarified that an incumbent for the post of helper should be 8th class pass. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties of Pump Operator. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference

can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant having been working continuously since the year 1987 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that pursuant to agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 27/8/1996 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Peon /Workshop attendant in the pay-scale of Rs.750-940/-, eligibility criteria of education/experience was that the incumbent should be 8th class pass, The claimant is 8th class pass, It shows that the workman/claimant who was engaged in the year 1988 is working as Helper/Chowkidar since then. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of **Helper, Sweeper, Mali** etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85

to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman/claimant despite rendering service for more than 30 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Helper (chowkidar).

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 7/1/2013. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Helper/Chowkidar in the regular pay-scale existing to the said post, w.e.f. 7/1/2013 with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Helper/Chowkidar w.e.f. 7/1/2013 in the regular pay-scale, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 7.1.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 19/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.1.2019 को प्राप्त हुए थे ।

[सं. एल-42011/120/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 193.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2013) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee and their workmen which were received by the Central Government on 15.1.2019.

[No. L-42011/120/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 19/2013

Shri Puran Chand,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No. L-42011/120/2012/IR(DU) dated 7/1/2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

'Whether action of management of IIT Roorkee in not regularizing the workman Shri Puran Chand s/o. Shri Mal Chand, Mate despite rendering for more than 24 years is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Sita Ram Semwal filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Mate) on muster roll basis we.f. February, 1988 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management in March, 1988 as unskilled casual daily wage worker. Consequent upon agitation of such casual daily wage workers in 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 12/8/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/3. In cross examination he deposed that he is 8th standard pass. He admitted that he was engaged as Mate on daily wage basis without any advertisement. He clarified that an incumbent for the post of Mate should be 8th class pass. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the

Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He admitted having applied for the post of clerk as well as Library Attendant against the advertisement issued by the Management but was not short listed/selected. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties of Pump Operator. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant having been working continuously since the year 1987 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that pursuant to agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 27/8/1996 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Peon /Helper in the pay-scale of Rs.750-940/-, eligibility criteria of education/experience was that the incumbent should be 8^{th} class pass, The claimant is 8^{th} class pass, It shows that the workman/claimant who was engaged in the year 1988 is working as Helper/Mate since then. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Ravinder Kumar Yadav despite rendering service for more than 30 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Pump Operator.

14) Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 7/1/2013. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Helper/Mate in the regular pay-scale existing to the said post, w.e.f. 7/1/2013 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Helper/Mate w.e.f. 7/1/2013 in the regular pay-scale of Telephone Operator, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 7. 1.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 17/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.1.2019 को प्राप्त हुए थे ।

[सं. एल-42011/118/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 194.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2013) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.1.2019.

[No. L-42011/118/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1. : NEW DELHI

ID No. 17/2013

Shri Ram Prakat,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/118/2012/IR(DU) dated 7.1.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Ram Prakat S/o. Shri Punnoo, Mali despite rendering service for more than 29 years continuously is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Ram Prakat filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Maali) on muster roll basis w.e.f. June, 1983 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager I June, 1983. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommdation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant (who is an illiterate) does not possess the minimum essential qualifications of 10th standard pass for selection even against an entry level Group D post (post of Maali) in the regular employment of the Management. The claimant had applied for internal advertised post of Maali and was called for interview held on 5/9/97 but he could not get a place in the merit list. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 12/8/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination he admitted that he is illiterate and was engaged as Maali without any advertisement. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 261 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pol. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Maali on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1983 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimants as part time for doing intermittent nature of work and/or for cleaning the bank premises is duly admitted by the Management as per its pleadings and evidence adduced on record. Office Memo Ex.MW1/W-2 shows that the workman/claimant Ram Prakat still working on contractual engagement under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 (Ex.MW1/5) issued by University of Roorki shows that for the post of Maali in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate (having knowledge of reading & writing) with two years experience of the work of Mali. It shows that the workman/claimant who was engaged in the year 1983 was eligible to be considered for the said post of Mali and at that time it was not required that the incumbent should be 10^{th} class pass, as has been pleaded by the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant on the issue of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) are few of them and they have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman who is 5^{th} standard pass is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Ram Prakat s/o. Shri Punnoo, Mali despite rendering service for more than 35 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 7/1/2013. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Mali in the regular pay-scale existing to the said post from 7th January, 2013 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 7/1/2013 in the regular pay-scale of MTS/Group-D Employee, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 195.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 20/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/01/2019 को प्राप्त हुए थे ।

[सं. एल-42011/121/2012- आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 195.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2013) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/121/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 20/2013

Shri Ravindra Kumar Yadav,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/121/2012/IR(DU) dated 7/1/2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Ravindra Kumar Yadav s/o. Shri Sheetal Prasad Yadav, Pump Operator despite rendering for more than 29 years is justified ? If not, what relief the said workman is entitled to ?'

2. Both parties were put to notice and workman Ravinder Kumar Yadav filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Pump Operator on muster roll basis we.f. August, 1987 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management in August, 1987 as unskilled casual daily wage worker. Consequent upon agitation of such casual daily wage workers in 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. The claimant had applied for the post of Library Assistant against advertisement dated 20/9/1999; for the post of Peon against posts advertised on 22/3/97 and against the post of Worker Grade-C in Mechanical & Indl.Engg. Department against advertisement dated 27/8/1996.. He was called for interview but was not selected/short listed due to inadequate experience in the relevant field. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 12/8/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/2. In cross examination he deposed that he is 8th standard pass and had annexed a certificate to this effect alongwith his application submitted for engagement with the Management. He admitted that he was engaged as telephone operator without any advertisement. He clarified that an incumbent for the post of telephone Operator should be literate. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Library Assistant and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He admitted having applied for the post of clerk as well as Library Attendant against the advertisement issued by the Management but was not short listed/selected. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties of Pump Operator. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant having been working continuously since the year 1987 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the

Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that pursuant to agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 27/8/1996 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Worker Grade-C in the pay-scale of Rs.775-1025/- as well as Workshop attendant in the pay-scale of Rs.750-940/-, eligibility criteria of education/experience was that the incumbent should be 8th class pass & having 1 years experience in the said field/line. The claimant is 8th class pass, It shows that the workman/claimant who was engaged in the year 1987 and is working as Pump operator since then, has got requisite experience by now. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that one Shri Kalyan Singh (at Sl.No.25) having educational qualification of 8th class pass having been regularized/appointed is being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who is similarly placed and is doing the same/equal work. This action of the Management is discriminatory and not justified.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Ravinder Kumar Yadav despite rendering service for more than 30 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Pump Operator.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 7/1/2013. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Telephone Operator in the regular pay-scale existing to the said post, w.e.f. 7/1/2013 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 7/1/2013 in the regular pay-scale of Telephone Operator, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 196.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 181/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42011/90/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 196.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 181/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/90/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1. : NEW DELHI

ID No. 181/2012

Shri Chander Bhan,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/90/2012-IR(DU) dated 12th November, 2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the services of Shri Chandrabhan s/o. Deewan, Attendant, despite rendering service for more than 30 years continuously is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Chander Bhan filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Electrician) on muster roll basis w.e.f. April, 1982 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee

chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager on 1/5/1982. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20/2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified. Prayer has been made for dismissal of the claim petition.

4. Vide order dated 05/06/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination he stated that he is 5th standard pass and was engaged as Helper without any advertisement. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Library Attendant and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Helper (Maali) on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a*

person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant on contract/casual basis for doing the work of Maali, is duly admitted by the Management as per its pleadings and evidence adduced on record. It is not in dispute that the workman/claimant is still working on contractual engagement under Y-1 category and is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20/2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/ regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers and had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 13/6/1995 (Ex.MW1/5 colly) issued by University of Roorki shows that for the post of Helper/Survey Tindal in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate having knowledge to upkeep the equipments/furniture etc.. It shows that the workman/claimant who was engaged in the year 1982 was eligible to be considered for the said post of Helper and at the later stage in the year 1995-96 when vacancies arose, he had got requisite experience in the line. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were/are similarly placed with the claimant on the issue of literacy and were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) being all illiterate are few of them and they have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the

claimant/workman who is 5th standard pass is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Keshwar Prasad, Helper (Mali) despite rendering service for more than 35 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 12/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Helper in the regular pay-scale existing to the said post from 12/11/2012 with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Helper (Mali) w.e.f. 12/11/2012 in the regular pay-scale of Helper, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 197.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 179/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे।

[सं. एल-42011/92/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 197.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/92/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1. : NEW DELHI

ID No. 179/2012

Shri Chote Lal,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/92/2012/IR(DU) dated 12th/21st November, 2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Chotey Lal Mali despite rendering service for more than 23 years continuously is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Chotey Lal filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Maali) on muster roll basis we.f. February, 1989 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager in February, 1989. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20/2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant (who is an illiterate) does not possess the minimum essential qualifications of 10th standard pass for selection even against an entry level Group D post (post of Maali) in the regular employment of the Management. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified. Prayer has been made for dismissal of the claim petition.

4. Vide order dated 18/7/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination he admitted that he is illiterate and was engaged as Maali without any advertisement. He also admitted about formulation of Y pool list by the Management;

conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Maali on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1983 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant on contractual/casual basis for doing the work of Mali, is duly admitted by the Management as per its pleadings and evidence adduced on record. Office Memo Ex.MW1/W-2 shows that the workman/claimant Chottey LaL who is still working on contractual engagement under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** (2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 (Ex.MW1/5) issued by University of Roorki shows that for the post of Maali in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate (having knowledge of reading & writing) with two years experience of the work of Mali. It shows that the workman/claimant who was engaged in the year 1983 was eligible to be considered for the said post of Mali and at that time it was not required that the incumbent should be 10^{th} class pass, as has been pleaded by the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were/are similarly placed with the claimant on the issue of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) being all illiterate are few of them and they have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Chottey Lal, Helper (Mali) despite rendering service for more than 29 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal notice to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 12/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Mali in the regular pay-scale existing to the said post from 12/11/2012 with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 12/11/2012 in the regular pay-scale of Helper (Mali), with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 198.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 178/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42011/91/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 198.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 178/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/91/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1. : NEW DELHI

ID No. 178/2012

Shri Keshwer Prasad,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
IIT Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/91/2012-IR(DU) dated 12th November, 2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Keshwar Prasad Beldar, despite rendering service for more than 25 years continuously is justified ? If not, what relief the said workman is entitled to ?'

2. Both parties were put to notice and workman Keshwar Prasad filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Maali) on muster roll basis w.e.f. April, 1987 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management as unskilled daily wager in April, 1987. Consequent upon agitation of such casual daily wage workers in the year 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20/2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommdation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant, being 7th class pass, does not possess the minimum essential qualifications of 10th standard pass for selection even against an entry level Group D post in the regular employment of the Management. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified. Prayer has been made for dismissal of the claim petition.

4. Vide order dated 18/07/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 and Ex.WW1/2. In cross examination he stated that he is educated upto 7th standard and was engaged as Maali without any advertisement. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized as Maali from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as Helper (Maali) on daily wage/ casual basis by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties as assigned to him. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant on contract/casual basis for doing the work of Maali, is duly admitted by the Management as per its pleadings and evidence adduced on record. It is not in dispute that the workman/claimant is still working on contractual engagement under Y-1 category and is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20/2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/ regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Document/notification dated 27/3/1997 (Ex.MW1/5 colly) issued by University of Roorki shows that for the post of Maali in the pay-scale of Rs.750-940/- eligibility criteria of education/experience was that the incumbent should be literate (having knowledge of reading & writing) with two years experience of the work of Mali. It shows that the workman/claimant who was engaged in the year 1987 was eligible to be considered for the said post of Mali and at that time it was not required that the incumbent should be 10^{th} class pass, as has been pleaded by the Management. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were/are similarly placed with the claimant on the issue of literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand (mentioned at Sl.N.21), Mahipal (at Sl.No.31 and Tara Chand (at Sl.No.80) being all illiterate are few of them and they have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of Helper, Sweeper, Mali etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman who is 7^{th} standard pass is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

"The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Keshwar Prasad, Helper (Mali) despite rendering service for more than 35 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 12/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Mali in the regular pay-scale existing to the said post from 12/11/2012 with all consequential benefits viz. annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Helper (Mali) w.e.f. 12/11/2012 in the regular pay-scale of Helper (Maali), with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 199.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, नई दिल्ली के पंचाट (संदर्भ संख्या 18/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42011/119/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 199.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2013) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42011/119/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1. : NEW DELHI

ID No. 18/2013

Shri Om Prakash
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/119/2012/IR(DU) dated 7/1/2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether action of management of IIT Roorkee in not regularizing the workman Shri Om Prakash s/o. Shri Bhaskranand, Telephone Operator is justified ? If not, what relief the said workman is entitled to ? '

2. Both parties were put to notice and workman Om Prakash filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Telephone Operator on muster roll basis we.f. August, 1992 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management in August, 1992 as unskilled casual daily wage worker. Consequent upon agitation of such casual daily wage workers in 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. The claimant had applied for the post of Library Attendant & also for the post of for the post of worker Grade-C in Mechanical & Industrial Engg. Department, against advertisement dated 27/8/1996, he was called for interview but was not selected/short listed due to inadequate experience in the relevant field. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 12/8/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/3. In cross examination he deposed that he is inter pass and had annexed a certificate to this effect alongwith his application submitted for engagement with the Management. He admitted that he was engaged as telephone operator without any advertisement. He clarified that an incumbent for the post of telephone Operator should have passed inter class. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed and that against the advertised post, he had also applied for the post of Maali and he was interviewed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He admitted having applied for the post of clerk as well as Library Attendant against the advertisement issued by the Management but was not short listed/selected. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1992 and he has been discharging duties of Telephone Operator. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant Om Prakash, having been working continuously since the year 1988 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the

Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that after agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 21/11/1994 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Telephone Operator in the pay-scale of Rs.775-1026/- eligibility criteria of education/experience was that the incumbent should be high school pass & having 5 years experience for operation of PBX Exchange of 600 lines. The claimant is inter pass, It shows that the workman/claimant who was engaged in the year 1992 and is working as Telephone operator since then, has got requisite experience by now. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that one Shri K.D. Pathak (at Sl.No.10) having educational qualification of 12th pass has been regularized/appointed is being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who is similarly placed and is doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman Shri Ram Prakat s/o. Shri Punnoo, Mali despite rendering service for more than 35 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Mali.

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 7/1/2013. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Telephone Operator in the regular pay-scale existing to the said post, w.e.f. 7/1/2013 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Mali w.e.f. 7/1/2013 in the regular pay-scale of Telephone Operator, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 200.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1 नई दिल्ली के पंचाट (संदर्भ संख्या 248/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42012/174/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 200.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 248/2015) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/174/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 248/2015

Shri B.L. Sharma,
Chamber No. 637, Western Wing,
Tis Hazari Court,
New Delhi – 110054 …Workman

Versus

National Textiles Corporation,
6th Floor, CGO Complex, Lodhi Road,
New Delhi 110 003 …Management

AWARD

A reference was received from Ministry of Labour, Government of India vide Letter No.L-42012/174/2015-IR(DU) dated 17.11.2015 under clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of National Textiles Corporation as not allowing Shri B.L. Sharma to resume duty on the basis of a fake resignation letter dated 01.02.1985 submitted by him can be construed as termination from service without complying the provisions of the ID Act? If yes, what relief the workman concerned is entitled to?'

2. Claim statement was filed on behalf of Shri B.L. Sharma, the claimant herein, averring that he joined the management as Labour Officer on 23.01.1981 and was confirmed in 1982. He was awarded increments from 1982 to 1985 abd his ACRs were very good. Thereafter he fell ill and was advised rest from 31.01.1985 to 07.02.1985 which was intimated to the management on 04.02.1985. When the claimant reported for duties alongwith fitness certificate, he

was not allowed to join on the grounds that fake resignation letter dated 01.02.1985 has been accepted by the management. On 24.12.1991 Ld. MM in Criminal Case No.119/I opined that the resignation letter is not written by the claimant. Labour Court order dated 16.02.1995 also recorded evidence of CFSL expert and declared that letter of resignation is not written by the claimant. Same opinion was given Shri Jaichandra, PO Labour Court and Shri AS Datter, PO Labour Court.

3. It is further averred by the claimant that since he was recruited on regular basis on permanent post and has been confirmed on the said post by the management and was advised rest by Government Doctor, resignation would become effective only after three months thereafter. The claimant has referred to various judgements . Finally, it has been prayed that he be granted salary fringe benefits from 01.02.1985 till date of his retirement on 14.04.2006 alongwith CPF, Gratuity, Pensionary benefits etc.

4. Claim was demurred by the management by taking various preliminary objections inter alia that the reference being barred by principles of resjudicata as the ID was disposed by Shri Ajit Bharihoke, Presiding Officer Labour Court VIII, Delhi vide order dated 17.0192 stating that the claimant has actually resigned from service and his termination cannot be termed as illegal. There being no industrial dispute, suppression of material facts that earlier a reference was made by the appropriate Government and the same has been answered against him, non existence of employer-employee relationship, the claimant not being a workman. LCA filed by him was dismissed by the Ld. Presiding Officer Labour Court III. Writ petitions have been filed from time to time in Hon'ble High Courts which have been dismissed. The management has claimed that the claimant is a law graduate and after resignation is practicing advocate in Delhi District Court and High Court and is working as Public Notary also, hence not entitled to any benefit. Management has denied the other material averments contained in the statement of claim and prayed that the reference may be answered in favour of the management .

5. Rejoinder was filed by the claimant wherein averment contained in the claim statement have been asserted and the facts mentioned by the management have been denied.

6. Based on the pleadings of the parties, following issues were framed:

(i) Whether the reference is barred by the principles of res-judicata?

(ii) Whether there no relationship of employer and employee between the parties, as alleged?

(iii) In terms of reference

7. Claimant filed his affidavit in evidence. Thereafter, the claimant filed an application under Section 10-B of the ID (Central) Rules, 1957, reply to which was filed by the management and the case was listed for consideration on the application. However, the claimant thereafter never appeared before this Tribunal despite affording as many as six opportunities. Thus, it is amply clear that the claimant is no more interested in adjudication of the reference on merits.

8. Since the claimant has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, Shri B.L. Sharma, the claimant herein, is still at liberty to agitate his cause in accordance with law. An award is accordingly passed.

Dated : January 7, 2019

A. C. DOGRA, Presiding Officer

नई दिल्ली, 15 जनवरी, 2019

का. आ. 201.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रजिस्ट्रार, आईआईटी रुड़की और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1 नई दिल्ली के पंचाट (संदर्भ संख्या 174/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.01.2019 को प्राप्त हुए थे ।

[सं. एल-42012/61/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 15th January, 2019

S.O. 201.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 174/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to the Registrar, IIT Roorkee, and their workmen which were received by the Central Government on 15.01.2019.

[No. L-42012/61/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT No.1. : NEW DELHI

ID No. 174/2012

Shri Som Dutt ,
(The General Secretary),
IIT Roorkee Karamchari Union,
IIT Roorkee …Workman/Claimant

Versus

The Registrar,
IIT Roorkee
Roorkee …Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42012/61/2012/IR(DU) dated 8/11/2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

'Whether action of management of IIT Roorkee in not regularizing the workman Shri Som Dutt s/o. Shri Ram Das, despite rendering for more than 21 years is justified ? If not, what relief the said workman is entitled to ?'

2. Both parties were put to notice and workman Som Dutt filed his statement of claim, with the averments that he was inducted into the service of erstwhile University of Roorkee (later on converted into IIT Roorkee) as Helper (Gatekeeper) on muster roll basis we.f. July, 1991 and continues to work in the same capacity since then. He requested the Management for his regularization many a times but to no avail. It is pleaded that the Management IIT Roorkee chalked out a plan under the Scheme of Y-Pool workers for the consistent absorption/regularization of such workmen/employees whose names were included in the Y-Pool for which the applicant was not taken into confidence. Though some of the workmen who were not included in the Y-Pool list have been absorbed but the claimant has been deprived of his legitimate right of being placed on regular pay scale. The claimant approached the Management several times for grant of such benefits but to no avail. He has prayed that order be passed (a) for upgradation of the claimant as per career development policy for the category to which he belongs with effect from the date he becomes entitled to his promotion; (b) for payment of arrears arising out of his regularization in the different regular pay scales and (c) for extension of all amenities & facilities such as residential accommodation allowance, medical, transport etc. for which the claimant becomes entitled consequent to his regularization and up-gradation in the regular pay scales.

3. The claim of the Workman has been resisted by the Management who filed its written statement wherein it has been alleged that the claimant was one of those casual daily wage workers whose services were engaged by the erstwhile University of the Management in July, 1991 as unskilled casual daily wage worker. Consequent upon agitation of such casual daily wage workers in 1993, a broad Memorandum of Understanding dated 22/11/1993 and 20./2/1996 was reduced into writing in the presence of Civil Administration inter-alia on the terms that the such daily wage workers would be considered for appointment against vacant posts according to their qualifications and on the basis of their seniority & performance/merit as per recruitment rules, regulations and guidelines. Advertisement from time to time including those dated 24/10/94, 21/11/94, 26/7/95, 13/6/95, 27/8/96 and 27/3/97 for regular vacancies were issued and applications were called from Y-Pool workers and accordingly 211 persons out of total 361 workers of Y-Pool were recruited/selected against the regular posts on the basis of their merit/qualifications and experience. There was no automatic right for absorption or fresh appointment with respect to all the daily wage or contract workers. The claimant had applied for the post of Library Assistant against advertisement dated 20/9/1999; for the post of Peon against posts advertised on 22/3/97 and against the post of Worker Grade-C in Mechanical & Indl.Engg. Department against advertisement dated 27/8/1996. He was called for interview but was not selected/short listed due to inadequate experience in the relevant field. Though efforts on the part of Government to reduce the workers' strength was going on but the Management with the sole intention to accommodation Y-Pool workers placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the rest of these Y Pool workers but the same was not accepted by the said Committee/Board. It is alleged that the Management is providing all the facilities viz. EPF, Pension, Gratuity, accommodation, revision of fixed wages, hospital facilities to the Y pool workers including the claimant. It is also alleged that the claimant was/is otherwise illegible for selection as a regular employee of the Management (IIT Roorkee).. The engagement of the claimant was purely on casual, intermittent and temporary basis and in exigencies of work which was extended from time to time, the claim of the claimant for regularization of his services is ill founded and unjustified . Prayer has been made for dismissal of the claim petition.

4. Vide order dated 29/5/2013 my learned Predecessor observed that no specific issue except those referred by the Government for adjudication arises from the pleadings of the parties and as such parties were called upon to adduce their evidence.

5. The Claimant in support of his case examined himself as WW1 who tendered his affidavits Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/2. In cross examination he deposed that he is 8th standard pass and had annexed a certificate to that effect alongwith his application submitted for engagement with the Management at the time of joining. He admitted that he was engaged as Helper on daily wage basis without any advertisement. He clarified that an incumbent for the post should be literate. He also admitted about formulation of Y pool list by the Management; conducting of test/interviews for the posts exclusively for the 361 Nos. of workers in the Y pool list and that the Management had recruited/regularized 211 such workers in the Y pool List. He also admitted that for different posts, minimum qualifications have been prescribed. He showed his ignorance that the Govt. of Uttar Pradesh imposed a ban on recruitment of non teaching staff vide orders dated 3/11/97 and 9/12/97. He also admitted that all eligible claimants/workmen whose names were there in the Y Pool list were given an opportunity to participate in the selection process for their absorption.

6. On the other hand, the Management examined one Shri Surendra Kumar Saini, Deputy Registrar (Legal) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/20. In cross examination he stated that category D posts have been abolished since 2006 and workmen/officials working in category-D are now termed as Multi Tasking Staff who are getting initial scale. While producing the regulations regarding the creation and pay-scale of different posts as Ex.MW1/W-5, he admitted that the posts created by Syndicate (Executive Body of Roorkee University) are in the pay scale approved by the State Government applicable at that time. He admitted that Management had created a single Y pool List but could not say whether at that time illiterate persons were regularized from the list of Y pool. He also admitted that Shri Bal Chand (mentioned at Sl.N.21) of list Ex.MW1/4 also being an illiterate was appointed as Safai Karamchari. Similarly incumbent at Sl.No.57, No.31 (Mahipal) and at Sl.No.80 (Tara Chand) in the said List all illiterate have been appointed as Safai Karamchari/Helper. He also admitted that the claimant/workman has worked for more than 240 days in a calendar year and is doing job regularly.

7. I have heard Shri Amit Sharma, A/R for the workman and Shri Sanjay Rawat, A/R for the Management and have also gone through the records carefully and my findings are as follows.

8. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman having been engaged as daily wager/ casual worker by the erstwhile University of Roorkee, has been under the employment of the Management since the year 1987 and he has been discharging duties of Pump Operator. As such, it clearly establishes relationship of employer-employee between the Management and claimant. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

9. As discussed above, in the case in hand engagement of the claimant as daily wager for doing intermittent nature of work is duly admitted by the Management as per its pleadings and evidence adduced on record. The workman/claimant having been working continuously since the year 1987 on contractual engagement/daily wage basis under Y-1 category is paid fixed monthly emoluments in respect of his services, that is to say that he is being paid minimum in the scale without any increment or promotion etc. for want of regularization.

10. During the course of arguments, learned A/R for the Management relied on a number of judgements to contend that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitled to claim regularization if he is not working against a sanctioned post.

11. There is no dispute about preposition of law on the point. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached**

Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other.**

12. It is not in dispute that pursuant to agitation of casual daily wage workers engaged in the erstwhile University of Roorkee in the year 1993, Memorandums of Understanding dated 22/11/1993 and 20./2/1996 were reduced into writing and subsequently, the Management had prepared a Y list of such workers for the purposes of their regularization against the vacant posts. As per written statement of the Management, 211 workers out of total 361 workers of Y-Pool list have already been appointed/regularized and are being given regular pay scale. Management had intended to accommodate and give benefit of regularization to remaining Y-Pool workers & had placed an agenda in the year 2004 before the Finance Committee and Board of Governors for absorption/regularization of the remaining/left over Y Pool workers but the same was not accepted by the said Committee/Board. This impliedly shows that a scheme/policy was formulated by the Management for regularizing the services of the workmen engaged on daily wage/casual basis. Documents/notifications dated 27/8/1996 (Ex.MW1/5 colly.) issued by University of Roorki shows that for the post of Peon /Workshop attendant in the pay-scale of Rs.750-940/-, eligibility criteria of education/experience was that the incumbent should be 8th class pass, The claimant is 8th class pass, It shows that the workman/claimant who was engaged in the year 1988 is working as Helper/Chowkidar since then. It is also evident from the testimony of MW1 Surender Kumar Saini, Deputy Registrar (Legal) that the Management has appointed/regularized the services of various other workers who were similarly placed with the claimant as regards literacy, were named in the Y Pool list (Ex.MW1/4). Shri Bal Chand, Maali (mentioned at Sl.N.21), Mahipal. Survey Tindal (at Sl.No.31), Shri Brijesh, Safai Karamchari (at Sl.No.56) and Tara Chand, Helper (at Sl.No.80) who are illiterate but have been placed in the regular pay-scale. Perusal of the said list also shows that there are other workmen who are illiterate but have been regularized as group-D for the post of **Helper, Sweeper, Mali** etc and reference may be made to the workmen shown at Sl.No.44,48, 67, 82, 85 to 89, 108, 114, 117, 139, 190, 201 of the said list. They have been regularized & are being paid wages in the regular pay-scale. On the contrary, the claimant/workman is being paid wages at a fixed consolidated rate at the minimum of the scale and that is to say that the workman/claimant is being paid lesser pay than those who are similarly placed and are doing the same/equal work.

13. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

14. Having regard to the above, this Tribunal is of the considered opinion that action of the Management in not regularizing the workman despite rendering service for more than 27 years continuously is unjustified and unwarranted. The workman /claimant is entitled to be regularized to the post of Helper (Gatekeeper).

15. Now the question arises for consideration is as to from which date the workman/claimant is entitled to be given benefit of regularization. Neither in the statement of claim, the workman/claimant has pleaded that he had made any written representation or demand/legal letter to the Management for consideration of his demand of regularization, nor he has filed any such document on record. It is pertinent to mention here that on the controversy between the parties, the reference to this Tribunal was made by the Appropriate Government vide letter dated 8/11/2012. In these circumstances, this Tribunal is of the considered view that the workman/claimant is entitled to get benefit of regularization to the post of Helper/Gatekeeper in the regular pay-scale existing to the said post, w.e.f. 8/11/2012 with all consequential benefits viz.annual increment and other prevalent benefits/facilities like HRA, transport, medical facility etc.

Relief :-

In view of my aforesaid findings, the Management is directed to regularize the workman/claimant to the post of Helper/Gatekeeper w.e.f. 8/11/2012 in the regular pay-scale, with all consequential benefits and arrears of the same be also paid to him. The Award is passed accordingly.

Date : 07.01.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 24 जनवरी, 2019

का.आ. 202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईडीबीआई बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नवम्बर–2 मुंबई के पंचाट (संदर्भ संख्या 54/2017) को प्रकाषित करती है, जो केन्द्रीय सरकार को 24.01.2019 प्राप्त हुआ था।

[सं. एल–12011/22/2016–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2019

S.O. 202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2,* Mumbai as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen, received by the Central Government on 24.01.2019.

[No. L-12011/22/2016– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO. CGIT-2/54 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF I.D.B.I BANK LTD. AND M/S. ALL SERVICES GLOBAL P. LTD.

1. The Chairman,
   IDBI Bank Ltd., IDBI Tower,
   Cuffe Parade,
   Mumbai – 400 005.

2. M/s. All Services Global P. Ltd.
   Plot No. AG-3, Cama Industrial Estate,
   Village Pahadi, Near Hub Opp. Kusum Masala,
   Goregaon [E], Mumbai – 400 063.

AND

THEIR WORKMEN

The General Secretary,
IDBI Bank Contract Employee's Association
Maharashtra,Chandrakant Dhuru Wadi, V.S. Marg,
Aagar Bazar, R. No. 7, Dadar [West],
Mumbai – 400 028.

APPEARANCES:

FOR THE EMPLOYER : Absent

FOR THE WORKMEN : Absent

Mumbai, dated the 21th December, 2018

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12011/22/2016 – IR (B-I) dated 06.12.2017. The terms of reference given in the schedule are as follows :

> *"Whether the demand of the IDBI Bank Contract* Employee's Association, Mumbai for paid holidays in addition to the regular weekly off and 4 National holidays at par with the regular employees of IDBI Bank is just and proper ? If not, then in case of working on such holidays, their demand for payment of overtime wages from the Management of M/s. All Services Global P. Ltd. on whose contract they are working in the Corporate Office of IDBI at Tower Building, Cuffe Parade, Mumbai is just and proper ? If so, what relief the workmen concerned are entitled to *? "*

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama it appears that the notices were served to both parties. However, the union has not filed statement of claim since long. Union remained absent. Therefore there is no statement of claim to substantiate the claim under reference.

4. For want of evidence the reference is liable to be rejected with no order as to costs.

ORDER

Reference is rejected for want of evidence.

Date: 21.12.2018

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 24 जनवरी, 2019

का.आ. 203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बॉम्बे मर्केंटाइल कोऑपरेटिव बैंक लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 49/2005) को प्रकाषित करती है, जो केन्द्रीय सरकार को 24.01.2019 प्राप्त हुआ था।

[सं. एल—12012/168/2005—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 24th January, 2019

S.O. 203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Kolkata as shown in the Annexure, in the industrial dispute between the management of Bombay Mercantile Cooperative Bank Ltd. and their workmen, received by the Central Government on 24.01.2019.

[No. L-12012/168/2005– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 49 of 2005

Parties: Employers in relation to the management of Bombay Mercantile Cooperative Bank Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. A. Hossain, learned counsel

On behalf of the Workmen : Mr. S. Mukherjee, learned counsel

Dated: 4th January, 2019 Industry: Banking

AWARD

Bereft of unnecessary details, factual matrix of the case is that the workman Shri Mumtaz Ahmed Ashiq Ali was appointed as Peon-cum-Watchman in the subordinate cadre of Bank on 01.01.1998 and was later promoted as Cashier-cum-Clerk on 1st August, 2001. While working as Cashier-cum-Clerk the workman was served with a chargesheet for conducting misconduct for his riotous, disorderly and indecent behavior on the premises of the Bank in presence of members of the staff during working hours. The enquiry was setup and after enquiry he was found guilty. Concurring with the Enquiry Officer's report, the management of the Bank finally passed an order on 12th January, 2005 inflicting punishment of dismissal from service of the Bank. Dispute regarding his dismissal arose and referred by the Government of India to this Tribunal vide Order No. L-12012/168/2005-IR(B-I) dated 28.11.2005 in following terms:

"Whether the action of the management of Bombay Mercantile Cooperative Bank Ltd., 89 Mohamedali Road, and Mumbai – 400003 in imposing the punishment of "Dismissal from the services of the Bank without notice" on Shri Mumtaz Ahmed Ashiq Ali vide its order No.67/STF/IR/15083 dated 12.01.2005 with immediate effect is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. The workman challenged the validity of enquiry on the ground that the person who conducted the enquiry was not competent to do so. The workman was victimized for not carrying out illegal and unreasonable orders actuated by *mala fide* motive to put the workman in trouble for no fault of his own. The workman also challenged the action of the Bank in imposing punishment of dismissal being bad in law and not in proportion to the charges leveled against him.

3. The management of the Bank file its written statement to the effect that on 3rd August, 2004 a customer, Mr. S. Roy approached the Bank for issuance of pay order which was not issued to him even after lapse of 40 minutes. At the end of the day when the Branch Manager called the workman and wanted to know the facts, the workman started shouting and abusing the officials working in the Branch and also threatened them inside the Manager's chamber to beat them outside. The Branch Manager objected to the workman's behavior and his using foul language. He also shouted at the Branch Manager. On 4th August, 2004 at about 9.40 A.M. the workman alongwith Shri Fida Mehdi Masdool Hassan Syed, a driver assaulted the Branch Manager, Shri Amir Azam Khan on his head, face and hand with their hands and fists causing injury to the Branch Manager in presence of staff members and customers of the branch within the premises of the Bank. The workman also used abusive language against the Branch Manager and threatened to beat him creating ugly scene and disrupting the working of the branch. The Branch Manger had to take medical treatment and lodged complaint with Beniapukur Police Station, Kolkata. An enquiry was held for the misconduct committed by the workman wherein the workman was found guilty of the charges. Therefore, the Bank dismissed him from services of the Bank.

4. As the workman had challenged the legality and validity of the enquiry, it was taken up as preliminary issue and decided by this Tribunal on 11th May, 2011. Enquiry was held to be in furtherance of principles of natural justice and therefore a valid enquiry.

5. After the domestic enquiry is held to be valid and proper, next question arises as to the scope of interference by the Tribunal. Initially the Industrial Tribunal had very little scope to interfere with the findings of the Enquiry Officer. However, later on Section 11A was inserted in the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act of 1947 for convenience) wherein it has been provided that the Industrial Tribunal has power to reappraise the findings of domestic enquiry. According to Section 11A of the Act of 1947 the Industrial Tribunal can set aside the order of discharge or dismissal and direct reinstatement of the workman, if it is satisfied that the order of dismissal or discharge was not justified.

6. The scope of judicial review by Industrial Tribunal has been analyzed by the Hon'ble Supreme Court in **Nirmala J. Jhala** v. **State of Gujarat & Another**, CDJ 2013 SC 216 in following terms -

"It is settled legal proposition that judicial review is not akin to adjudication on merit by re- appreciating the evidence as an Appellate Authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to becanvassed before the Court in proceedings."

7. The Hon'ble Supreme Court has further observed that

"The decision referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there is no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere."

8. Learned counsel for the workman has argued that though the sufficiency of evidence adduced during domestic enquiry cannot be looked into by this Tribunal, but where the report submitted by the Enquiry Officer is perverse, there is enough scope of interference. A perverse finding is one which is passed on no evidence or one that no reasonable

person would arrive at. Reiterating the principles laid down by the Hon'ble Apex Court in **Tribeny Rubber & Plastic** v. **CEE**, AIR 1994 SC 1341 the Hon'ble Apex Court in **General Manager, Punjab & Sind Bank** v. **Daya Singh**, (2011) 2 SCC 233 has held that where some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration, the findings can be said to be perverse.

9. Explaining the test of perversity the Hon'ble Apex Court in **State Bank of Bikaner & Jaipur** v. **Nemi Chand Nalwya**, 2011 (4) Scale 56 has held as follows:

> *"6. It is now well settled that the Court will not act as an appellate court and reassess the evidence lead in the domestic enquiry, nor interference on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based onevidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the finding in departmental enquiries. Therefore, Courts will not interfere with the findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will,however,interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous consideration."*

10. Now scrutinizing the facts of the instant case with above angle, we have to see whether there is no evidence on record to prove the charges leveled against the workman or some extraneous material has been taken into consideration by the Enquiry Officer. On perusal of record of domestic enquiry it is revealed that the workman concerned had been charged with misconduct. It was alleged that on 3rd August, 2004 one of the customers of the Bank had applied for issuance of pay order which was not issued to him even after 10 minutes. Then the matter was reported to the Branch Manager, Mr. Amir Azam Khan who called the workman to explain the whole matter, but he shouted at the Branch Manager and also used foul languages. Next day, on 4th August, 2004 at about 9.40 A.M. the workman concerned alongwith the Driver of the Bank, Shri Fida Mehdi Masdool Hassan Syed assaulted the Branch Manager on his face and hands and thus caused injuries in the presence of staff members an customers of the branch within the premises of the branch. In order to prove the above charge of misconduct, Mr. Shakeel Ahmed, Mr. Amir Azam Khan the Branch Manager were examined and deposed against the workman concerned during enquiry proceeding. Both the witnesses had narrated the incident on oath and were also cross-examined by the defence. Learned counsel for the workman has failed to point out in what respect the charges of misconduct leveled against the workman concerned are based on no evidence or what extraneous material considered by the Enquiry Officer. As has already been seen above, the sufficiency of evidence cannot be seen at this stage. Thus the finding of Enquiry Officer can in no way be said to be perverse.

11. Even if a finding of Enquiry Officer does not suffer with any illegality or perversity, Tribunal has jurisdiction under Section 11A of the Act of 1947 to interfere, if it is satisfied that the order of discharge or dismissal was not justified. In catena of cases, it has been held that the action of the management must conform with proportionality of gravity of offence.

12. In **Muriadih Colliery** v. **Bihar Colliery Kamgar Union**, 2005 (3) SCC 331 the law has been laid down by the Hon'ble Supreme Court as follows –

> *"It is well established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic enquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment, it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment."*

13. In **Life Insurance Corporation of India** v. **R. Dandapani**, 2006(108) FLR 953 it has been observed by the Hon'ble Apex Court that the Tribunal has power to reduce the quantum of punishment, but power under Section 11-A has to be exercised judiciously and the Industrial Tribunal or Labour Court Is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned.

14. In **Management of Bharat Heavy Electricals** v. **M. Mani & Others**, 2018 LLR 2(SC) Hon'ble the Apex Court has held that where a departmental enquiry is held to be legal and proper then the only question remains for consideration is whether the punishment of dismissal is required any interference. Relevant portion of the judgment may be quoted as below:

> *"18. In other words, the Labour Court should have then confined its enquiry to examine only one limited question as to whether the punishment given to the respondents was, in any way, disproportionate to the gravity of the charge leveled against them and this, the Labour Court should have examined by taking recourse to the provisions of Section 11-A of the Industrial Disputes Act, 1947. ……"*

15. Thus the jurisdiction to interfere with the quantum of punishment can be exercised only when it is found to be grossly disproportionate. In the present case it has been seen that the workman concerned has not only used abusive language, but also assaulted the Manager of the Branch at bank premises in the presence of not only bank staff but also customers of the Branch. Thus the workman concerned committed indiscipline at work place which has been regarded as a matter of prime concern. Therefore, punishment of dismissal from service cannot be said to be disproportionate so as to shock one's conscience. In Muriadih Colliery case (supra) two workmen alongwith others armed with deadly went to the

General Manager and assaulted him causing injuries to him and his colleagues. The Court considered it as an act of gross indiscipline.

16. Similarly, in **M.P. Electricity Board** v. **Jagadish Chandra Sharma**, (2005) 3 SCC 401 the employee was found guilty hitting and injuring his superior at workplace in presence of other employees. The Hon'ble Supreme Court held that this clearly amounted to breach of discipline of the organization. Relevant portion of the judgment is as follows:

> *"Discipline at the workplace in an organization like the employer herein, is the sin qua non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved."*

Hon'ble Court has further quoted Jack Chan to highlight the importance of discipline at work place.

> *"discipline is a form of civily responsible behavior to help to maintain social order and contribute, preservation, if not advancement of collective interest of the society at large."*

17. Learned counsel for the management has cited Biecco Lawrie Ltd. & Another v. State of West Bengal, 2009-IV-LLJ 644, K. Yadiah v. Chief Security Commissioner, RPF, 2007 (112) FLR 130 and H.R.B.H. Siddique v. Brihan Mumbai Electricity Supply, 2007 (1) CLR 997 wherein it has been held that an act of assault cannot be regarded as a minor breach of discipline and use of abusive language by an employee would not be tolerated in a civilized society. In above case laws Courts also approved rule of shockingly disproportionality.

18. On the factual score it has been found that on 3rd August, 2004 when the Branch Manager wanted to have explanation for delay in issuance of pay order to one of the customers of the Bank, the workman concerned started shouting and abusing the officials working in the branch and threatened them inside the chamber of the Branch Manager. He also shouted at the Branch Manager using foul languages. Again on 4th August, 2004 at about 9.40 A.M. the workman concerned alongwith Driver of the Bank assaulted the Branch Manager within the premises of the Bank in the presence of staff members and customers of the Branch. Thus the workman created an atmosphere of indiscipline and disturbed the smooth and peaceful functioning of the Bank. In an organization where head of the organization himself is subjected to abusive languages and physical assault by subordinate staff of the organization, the workman cannot be said to deserve to remain in employment. His presence in the organization is detrimental to the interest of the Bank. In these circumstances, the punishment imposed by the management cannot be said to be shockingly disproportionate to the charges of misconduct leveled against the workman, in absence of which no interference by the Tribunal is warranted under Section 11A of the Act of 1947.

18. In view of above, the action of the management of Bombay Mercantile Cooperative Bank Ltd. in imposing the punishment of dismissal from service of the Bank on Shri Mumtaz Ahmed Ashiq Ali is legal and justified and workman concerned is not entitled to any relief.

Award is passed accordingly.

Dated, Kolkata,

The 4th January, 2019.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 24 जनवरी, 2019

का. आ. 204.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फूड कारपोरेशन ऑफ़ इंडिया एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 15/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था ।

[सं. एल-22012/65/एफ/1993–आईआर (सीएम-II)]

राजेंद्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2019

S.O. 204.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 15/1993) of the Industrial Tribunal-cum-Labour Court, KOTA as shown in the Annexure, in the Industrial dispute between the employers in relation to the Food Corporation of India and their workman, which were received by the Central Government on 21.01.2019.

[No. L-22012/65/F/1993-IR (CM-II)

RAJENDER SINGH, Section Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा,(राज.)

पीठासीन अधिकारी— श्री विक्रान्त गुप्ता, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांकःऔ.न्या. (केन्द्रीय)—15/1993
दिनांक स्थापितः 26/06/1993

प्रसंगः भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश
क्रं.एल—22012/65/एफ/93—आई आर (सी. II)
दिनांक 24/06/1993

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क)
औद्योगिक विवाद अधिनियम,1947

मध्य

रामफूल बैरवा पुत्र ग्यारसीलाल बैरवा, मु.पोस्ट खटुपुरा
तहसील व जिला सवाईमाधोपुर। ...प्रार्थी श्रमिक

एवं

प्रबन्धक, भारतीय खाद्य निगम, सवाईमाधोपुर (राजस्थान)। ...अप्रार्थी

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री पुरूषोत्तम दाधीच
अप्रार्थी की ओर से प्रतिनिधि : श्री सी.बी.सोरल

दिनांक : 20/11/2018

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक **आदेश दिनांक 24/06/1993** के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त ''अधिनियम'' से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया हैः—

> ''क्या प्रबंधन, भारतीय खाद्य निगम, सवाईमाधोपुर की यह कार्यवाही कि ठेकेदार द्वारा रखे गये हाजरी रिकार्ड को आधार न मान कर द्वार प्रविष्ट पंजिका (Gate Entry Register) को आधार मान कर ठेका मजदूरों को विभागीयकरण करना उचित एवं न्याय संगत है। यदि नहीं तो कर्मकार श्री रामफूल बैरवा पुत्र श्री ग्यारसीलाल बैरवा किस अनुतोष का हकदार है और किस तारीख से।''

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से स्टेटमेन्ट ऑफ क्लेम न्यायाधिकरण के समक्ष प्रस्तुत कर संक्षिप्तः यह अभिव्यक्त किया गया है कि प्रार्थी, भारतीय खाद्य निगम, सवाईमाधोपुर में ठेकेदार हरकचंद बंसल/बंसल एण्टर प्राईजेज, के यहॉ वर्ष 1988 से उक्त निगम का माल चढ़ाने व उतारने का काम निरन्तर करता चला आ रहा है। उक्त निगम का माल अंदर लाने और बाहर ले जाने की व्यवस्था रेल्वे वैगनों द्वारा होती है जिसके लिए सवाईमाधोपुर रेल्वे यार्ड से निगम परिसर के गोदामों तक रेल्वे लाईन डली हुई है जिससे रेल्वे वैगनों को निगम परिसर में लाने और वहॉ से वापस ले जाने का काम करते हैं। रेल्वे इंजिन और वैगनों के आने जाने के लिए निगम परिसर के पीछे रेल्वे लाइन के ऊपर एक फाटक बना हुआ है जो निगम का रेल्वे फाटक के नाम से जाना जाता है। निगम के रेल्वे फाटक के पीछे बसे हुए गांव भडेरडा एवं खटुपुरा नजदीक होने के कारण इन गावों में रहने वाले श्रमिक जो निगम में काम करते हैं, वह बहुधा इस रेल्वे फाटक से ही प्रवेश कर अन्दर निगम में काम करने जाते हैं। कामगारों को निगम में काम करने के लिए परिचय—पत्र दिये गये हैं। ठेकेदार अपने मजदूरों की हाजिरी अपने द्वारा रखे गये रजिस्टर में अलग से करता है, मजदूरों को प्रत्येक माह हाजिरी अनुसार वेतन वितरण करता है जो निगम के प्रतिनिधि के समक्ष वितरण करने का प्रावधान है। भारत सरकार के नोटिफिकेशन दिनांक 07/09/90 के द्वारा खाद्य निगम में ठेकेदारी प्रथा समाप्त की गयी और उसके अनुसार निगम में कार्यरत ठेकेदार के श्रमिकों का विभागीयकरण करना अपेक्षित हो गया। खाद्य निगम, सवाईमाधोपुर ने विभागीयकरण की प्रकिया प्रारम्भ की और उसके अन्तर्गत कामगारों की 1 अप्रेल,88 से 31 मार्च, 91 तक तीन वित्तीय वर्षो की उपस्थितियों के गेट पर रखे प्रविष्ठ रजिस्टर का अवलोकन कर गणना की गयी और उसमें उपलब्ध उपस्थितियों को ही आधार मानकर जिस कामगार की उपस्थिति 254 दिन थी, उसका विभागीयकरण में चयन कर लिया गया। चयन के लिए उपस्थितियों की गणना गलत प्रकार से निगम के द्वार प्रविष्ठ पंजिका(गेट एन्ट्री रजिस्टर) के आधार पर की गयी है जिसमें प्रार्थी की हाजरी 214 दिन दर्शायी है, जबकि वास्तविक और न्यायसंगत आधार, ठेकेदार द्वारा रखे गये हाजरी रिकार्ड के अनुसार होना चाहिए जिसके अनुसार प्रार्थी की हाजरी चयनित श्रमिकों से बहुत ज्यादा होती है। चूँकि प्रार्थी की तरह और श्रमिक जो निगम के रेल्वे फाटक के पीछे नजदीकी गांव भडरेडा और खटुपुर से काम पर आते हैं, वे कभी—कभी पीछे से रेल्वे फाटक में होकर निगम में काम पर आते हैं, उनकी उपस्थिति द्वार प्रविष्ठ पंजिका में नहीं होती, परन्तु ठेकेदार अपने हाजरी रजिस्टर में अवश्य करता है और इसी आधार पर वेतन वितरण करता है। अभिकथित किया गया है कि निगम के प्रबन्धक ने चयन के लिए गेट एन्ट्री रजिस्टर में दर्शायी गयी उपस्थिति को ही आधार मानकर स्टेटमेन्ट तैयार करवाया और उसी आधार पर श्रमिकों को चयन कर लिया जो सत्यता वास्तविकता से परे होने के कारण न्यायसंगत नहीं था। आगे अभिकथित किया गया है कि प्रबन्धक द्वारा जो गेट एन्ट्री रजिस्टर के आधार पर हाजरी का स्टेटमेन्ट तैयार किया गया, उसमें प्रार्थी श्रमिक की अप्रेल,1988 की हाजरी जो ठेकेदार के रिकार्ड में दर्ज थी, वह प्रबन्धक के स्टेटमेन्ट में दर्ज नहीं की गयी थी जिससे यह प्रमाणित होता है कि प्रबन्धक द्वारा गलत स्टेटमेन्ट तैयार करवाकर गलत चयन किया गया। पूरे तीन वर्षो का रिकार्ड समझौता अधिकारी के पास उपलब्ध नहीं हो सका अन्यथा ऐसी विसंगतियां और भी सामने आ जाती। यह तथ्य समझौता अधिकारी ने अपने प्रतिवेदन दि.26/02/93 में उल्लेखित किया है। यह भी

अभिकथित किया गया कि प्रार्थी की उपस्थिति का रिकार्ड जो ठेकेदार द्वारा रखा जाता है तथा प्रार्थी की ठेकेदार के यहॉ काम की उपस्थिति का पूर्ण अवलोकन कर उपस्थिति जोड़ी जावे तो प्रार्थी की उपस्थिति जो चयनित श्रमिक है, उनसे अधिक निकलेगी और उससे प्रार्थी का चयन अवश्यम्भावी है। अन्त में प्रार्थना की गयी है कि अप्रार्थी प्रबन्धक, भारतीय खाद्य निगम, सवाई माधोपुर को पाबन्द किया जावे कि वह प्रार्थी का चयन कर स्थायी विभागीय श्रमिक नियुक्त करे व अन्य श्रमिकों की चयन तिथि से चयन कर उसी अनुसार पिछले वेतन, ग्रेड इत्यादि का लाभ प्रार्थी को प्रदान किया जावे।

4. अप्रार्थी की ओर से उक्त क्लेम का जवाब प्रस्तुत कर प्रारम्भिक आपत्तियों में यह अभिकथित किया गया है कि अप्रार्थी, प्रार्थी का नियोजक नहीं होने व प्रार्थी व अप्रार्थी के मध्य नियोक्ता एवं नियोजक के कोई भी सम्बन्ध नहीं होने के कारण क्लेम सुनवाई योग्य नहीं होकर निरस्तनीय है। प्रार्थी द्वारा क्लेम में वर्णित ठेकेदार हरकचंद बंसल/बंसल एन्टरप्राईजेज जिसके यहॉ माल चढ़ाने व उतारने का कार्य करना दर्शाया गया है, वही उसका नियोजक हो सकता था जिसे आवश्यक पक्षकार होने पर भी पक्षकार नहीं बनाया गया है, अतः अप्रार्थी के विरूद्ध क्लेम निरस्तनीय है। प्रार्थी द्वारा यह भी नहीं बतलाया गया है कि उक्त दोनों ठेकेदार ने अप्रार्थी संस्थान में किस–किस अवधि में व कितने–कितने समय तक कार्य किया है, अतः क्लेम डिफेक्टिव होने के कारण निरस्तनीय है। प्रार्थी द्वारा यह नहीं बताया गया है कि वह अप्रार्थी निगम में विभागीयकृत किये गये किस श्रमिक से एवं किस प्रकार से वरिष्ठ है तथा ऐसे श्रमिक का पूर्ण विवरण निवास स्थान, उपस्थिति आदि को भी नहीं दर्शाया गया है। प्रार्थी श्रमिक निगम में लिये गये अन्य श्रमिकों के विरूद्ध स्वयं को वरिष्ठ बताते हुए अपना केस ला रहा है, किन्हें ऐसे श्रमिकों को क्लेम में पक्षकार नहीं बनाया गया है। यह भी अभिकथित किया गया है कि इस सम्बन्ध में नेतराम व अन्य व्यक्तियों द्वारा खाद्य निगम के मध्यप्रदेश स्थित सागर डिपो के विरूद्ध विवाद उठाया गया था जो भारत सरकार, श्रम मंत्रालय द्वारा अपने आदेश दि.29/01/93 के द्वारा विवाद को औद्योगिक न्यायाधिकरण के समक्ष न्यायनिर्णयार्थ नहीं भिजवाया गया क्योंकि उसमें यह माना गया कि नेतराम आदि व्यक्तियों के व भारतीय खाद्य निगम के मध्य नियोक्ता व नियोजक के सम्बन्ध नहीं है। यह भी अभिकथित किया गया है कि प्रार्थी, अप्रार्थी का श्रमिक नहीं था इसलिए अप्रार्थी के किसी भी प्रबन्धकीय आन्तरिक कार्य की प्रकिया गत अपनायी जाने वाली कार्य प्रणाली पर उसे आक्षेप उठाने का कोई कानूनी अधिकार प्राप्त नहीं है। क्लेम का आगे जवाब में यह प्रतिवाद किया गया है कि प्रार्थी द्वारा सहायक श्रम आयुक्त(के) कोटा के यहॉ जो प्रार्थना–पत्र दि. 01/07/92 को प्रस्तुत किया गया, उसके मद नं.1 में प्रार्थी ने स्वयं को वर्ष 1987 में ठेकेदार हरकचंद बंसल के यहॉ माल चढ़ाने–उतारने का कार्य करना बताया है, जबकि प्रस्तुत क्लेम में वर्ष 1988 में ठेकेदार हरकचन्द बंसल/बंसल एन्टरप्राईजेज के के यहॉ कार्य करना बतलाया है जोकि दोनों अलग–अलग संस्थान है, अतः क्लेम विरोधाभाषी होने से स्वतः ही निरस्तनीय है। प्रार्थी ने न्यायाधिकरण में जो क्लेम पेश किया है, उसमें उक्त प्रार्थना–पत्र दिनांक 01/7/92 में वर्णित तथ्यों का कोई विवरण नहीं दिया है तथा उसमें वर्णित यह कथन गलत है कि रेल्वे लाईन के ऊपर जो फाटक बना हुआ है, वह अप्रार्थी निगम के रेल्वे फाटक के नाम से जाना जाता है। क्लेम का चरण क्रम 3 अप्रार्थी से सम्बन्धित नहीं होने से एवं प्रार्थी के मांग–पत्र दि.01/07/92 जोकि सहायक श्रम आयुक्त(के) कोटा के यहॉ प्रस्तुत किया गया है, इस सम्बन्ध में कोई मांग नहीं होने के कारण पूर्णतया अस्वीकार्य है। इसी प्रकार क्लेम का चरण क्रम 4, 5, 6, 7 भी असंगत होने से अस्वीकार किया गया है। क्लेम के चरण क्रम 8 के अन्तर्गत पुनः प्रार्थी व अप्रार्थी के मध्य नियोक्ता एवं नियोजक के सम्बन्ध नहीं होने की बात दोहराते हुए सम्पूर्ण क्लेम निराधार होने से अस्वीकार कर निरस्त किये जाने की प्रार्थना की गयी है।

5. प्रार्थी श्रमिक की ओर से जवाबुलजवाब भी प्रस्तुत कर यही अभिकथित किया गया है कि प्रार्थी ने जो माल चढ़ाने व उतारने का कार्य किया है वह अप्रार्थी नियोजक का ही माल था, ना कि तथाकथित ठेकेदार का। प्रार्थी के कार्य पर नियंत्रण भी नियोजक के अधिकारियों का ही रहा है। प्रार्थी को यह विवरण रेफ्रेन्स के विवादग्रस्त बिन्दु के अनुसार देने की आवश्यकता नहीं है क्योंकि रेफ्रेन्स में प्रार्थी ने नियोजक की उस प्रक्रिया को चुनौती दी है जिसके अनुसार श्रमिकों का विभागीयकरण किया गया है। प्रार्थी की हाजरी रिकार्ड को आधार मान लिया जावे तो प्रार्थी का विभागीयकरण निश्चित तौर पर है और अप्रार्थी को प्रार्थी का उपस्थिति रिकार्ड के आधार पर ही विभागीयकरण करना चाहिए। यह भी अभिकथित किया गया है कि ठेकेदारों के माध्यम से कार्य करते हुए नियोजक के यहॉ जिन श्रमिकों को 240 दिन या उससे अधिक समय हो गया था, उन्हें नियोजक के यहॉ विभागीयकरण करना था, यानि नियोजक की रोल पर नौकरी पर लेना था। 240 दिन हाजरी की गणना नियोजक ने गेट के एन्ट्री रजिस्टर के अनुसार की थी, जबकि नियोजक के यहॉ पर श्रमिकों को ड्यूटी पर आने–जाने के लिए गेट की एन्ट्री आवश्यक नहीं थी। नियोजक के यहॉ 3 गेट थे तथा किसी भी गेट से श्रमिक ड्यूटी पर आ–जा सकता था। 240 दिन की गणना करने के लिए उपस्थिति का रिकार्ड व वेतन प्राप्त करने का रिकार्ड देखा जाना अनिवार्य था और इसी के जरिये विभागीयकरण होना चाहिए था जो नहीं किया गया। अतः प्रार्थी पिछले सम्पूर्ण वेतन व लाभों सहित विभागीयकरण करवाये जाने का अधिकारी है जो उसे प्रदान किया जावे।

6. साक्ष्य में प्रार्थी श्रमिक रामफूल बैरवा तथा अप्रार्थी पक्ष की ओर से रामेश्वर प्रसाद कछवाहा, सहायक प्रबन्धक तथा सीताराम शर्मा, सहायक प्रबन्धक के शपथ–पत्र प्रस्तुत हुए जिनसे उभयपक्ष के प्रतिनिधिगण द्वारा परस्पर जिरह की गयी। उभयपक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी जिसका यथासमय उल्लेख किया जावेगा।

7. उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गयी जो बहस मुख्यतः उनके द्वारा प्रस्तुत अपने–अपने अभ्यावेदनों पर ही आधारित रही है, अप्रार्थी पक्ष की ओर से लिखित बहस भी प्रस्तुत की गयी, जिसका तथा पत्रावली पर उपलब्ध साक्ष्य व सामग्री का ध्यानपूर्वक परिशीलन किया गया। अप्रार्थी पक्ष ने अपनी बहस/तर्क समर्थन में निम्न न्यायदृष्टांत पेश किया हैः–

"एआईआर 1954 मद्रास 1045–मैनेजमेन्ट ऑफ मैसर्स ऑडियन सिनेमा बनाम वर्कर्स ऑफ सागर टॉकिज":–

उक्त न्यायदृष्टांत में माननीय उच्चतम न्यायालय द्वारा विधि का निम्न सिद्धांत प्रतिपादित किया हैः–

> "In a case where the employment has not started at all but is merely in the stage of a contract these can not be an industrial dispute between employer on a person whom he has agreed to take into the employ, but whom he has never employed, any difference between the parties to the contract must be resolved in the ordinary courts by a suit for damages."

8. मैंने उभयपक्ष के तर्को पर ध्यानपूर्वक मनन किया व पत्रावली का ध्यानपूर्वक अवलोकन किया। पत्रावली के अवलोकन से स्पष्ट है कि प्रार्थी पक्ष ने अपने तर्को के समर्थन में स्टेटमेन्ट ऑफ क्लेम, प्रार्थी के शपथ–पत्र, जिरह तथा प्रार्थी द्वारा प्रस्तुत दस्तावेज प्रदर्श डबल्यू.1 लगायत डबल्यू.5 का अवलम्ब लिया है`प्रदर्श डबल्यू.1 नक्शा है जिसमें भारतीय खाद्य निगम के सवाईमाधोपुर स्थित गोदाम तथा रेल्वे ट्रेक को दर्शाया गया है। प्रदर्श डबल्यू.2 प्रार्थी रामफूल बैरवा द्वारा सहायक श्रम आयुक्त केन्द्रीय को दिया गया प्रार्थना–पत्र है जिसमें उसने निवेदन किया है कि ठेकेदार के रिकार्ड के अनुसार उसकी सेवा उन व्यक्तियों से ज्यादा है जिनकी सेवाओं का विभागीयकरण किया गया है, जबकि प्रार्थी की सेवा का वर्गीकरण नहीं किया गया है। प्रदर्श डबल्यू. 3 अप्रार्थी पक्ष द्वारा समझौता अधिकारी के समक्ष प्रस्तुत जवाब है। प्रदर्श डबल्यू.4 प्रार्थी का प्रार्थना–पत्र है जिसमें उसने निवेदन किया है कि उसे रेगूलराईज नहीं किया जाना गलत है तथा अप्रार्थी द्वारा कांट्रेक्टर लेबर का चयन गेट एन्ट्री के द्वारा किया गया है, वह गलत है। इसमें उसने यह भी निवेदन किया है कि कर्मचारी के स्थायीकरण/रेगूलराईजेशन हेतु ठेकेदार द्वारा संधारित हाजिरी रजिस्टर के आधार पर कर्मचारी की हाजिरी मानी जाना

चाहिए, ना कि गेट पास के जरिये। प्रदर्श डबल्यू.5 असफल वार्ता प्रतिवेदन है। इस प्रकार प्रार्थी द्वारा प्रस्तुत सभी दस्तावेजात प्रदर्श डबल्यू.1 लगायत डबल्यू.5 के अवलोकन से यही प्रकट होता है कि इसमें से कोई भी दस्तावेज ऐसा नहीं है जिससे यह प्रकट होता हो कि प्रार्थी ने अप्रार्थी के सवाईमाधोपुर स्थित गोदाम में कार्य किया हो या कितने दिन किया हो। प्रार्थी ने अप्रार्थी के समक्ष अपने कार्यरत रहने को सिद्ध करने हेतु पहचान–पत्र संख्या 29779 का भी अवलम्ब लिया है जिसमें जारी करने की तिथि दिनांक 15/04/90 दर्शायी गयी है, परन्तु इससे भी यह प्रकट नहीं होता है कि प्रार्थी ने अप्रार्थी के यहॉ किस–किस वर्ष में कितने–कितने दिन कार्य किया है। सम्पूर्ण पत्रावली के अवलोकन से यह प्रकट होता है कि प्रार्थी ने ऐसा कोई दस्तावेज न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया है जिससे यह साबित होता हो कि प्रार्थी ने किन तिथि, माह व वर्ष में अप्रार्थी के यहॉ कुल कितनी अवधि तक कार्य किया है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम तथा शपथ–पत्र के आधार पर तर्क दिया है कि प्रार्थी का चयन स्थायी विभागीय श्रमिक हेतु नहीं किया जाना गलत है तथा चयन के लिए उपस्थिति की गणना गलत प्रकार से अप्रार्थी निगम के द्वारा द्वार प्रविष्ट पंजिका (Gate Entry Register) के आधार पर की गयी है जिसमें उसकी हाजिरी केवल 69 दिन दर्शायी गयी है, जबकि वास्तविक एवं न्यायसंगत आधार ठेकेदार द्वारा रखा गया हाजिरी रजिस्टर है जिसमें प्रार्थी की हाजिरी चयनित श्रमिकों से बहुत ज्यादा होती है। प्रार्थी ने अपने शपथ–पत्र में यह भी कथन किया है कि अप्रार्थी निगम के प्रबन्धक ने चयन के लिए गेट एन्ट्री रजिस्टर में दर्शायी गयी उपस्थिति को ही आधार मानकर स्टेटमेन्ट तैयार करवाया तथा उसी आधार पर श्रमिकों का चयन कर लिया। शपथ–पत्र में यह भी कथन किया गया है कि समझौता अधिकारी के पास वार्ता में जब दोनों पक्ष उपस्थित हुए तो सेम्पल के तौर पर ठेकेदार का हाजिरी रजिस्टर मई–जून, 90 का रिकार्ड उपस्थिति हेतु प्रबन्धक द्वारा गलत स्टेटमेन्ट तैयार करवाकर गलत चयन किया गया। प्रार्थी ने अपनी जिरह में यह तथ्य स्वीकार किया है कि उसका ठेकेदार हरकचन्द 22 गोदाम का था। यह भी स्वीकार किया है कि 22 गोदाम में जो भी ठेकेदार के श्रमिक थे उनके गेट से प्रवेश करते थे। उसने जिरह में यह भी कथन किया है कि उसे नहीं मालूम की विभागीयकरण के सम्बन्ध में विभाग व यूनियन के मध्य समझौता हुआ था। उसने कथन किया है कि वह अप्रार्थी के यहॉ गेहूं सोरने(इकठ्ठा करने) का कार्य करता था जो केजुअल लेबर का था तथा वह माल उतारने व चढ़ाने का काम नहीं करता था। उसने यह भी कथन किया है कि उसे पता नहीं कि लिस्ट बनायी गयी या नहीं तथा लिस्ट में उसका नम्बर कितना था। इस प्रकार प्रार्थी द्वारा स्टेटमेन्ट आफ क्लेम, प्रस्तुत किये गये शपथ–पत्र तथा उसकी जिरह से भी यह प्रकट नहीं होता है कि प्रार्थी ने कितनी अवधि में किस–किस दिन माह व वर्ष में अप्रार्थी के यहॉ कार्य किया। प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट आफ क्लेम, शपथ–पत्र तथा उसकी जिरह से यह प्रकट होता है कि प्रार्थी, ठेकेदार हरकचंद बंसल के यहॉ कार्य करता था जिसका कि उसके द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम की मद संख्या 1 में भी अंकन है। स्टेटमेन्ट ऑफ क्लेम में प्रार्थी ने यह कथन किया है कि वह वर्ष 1988 से भारतीय खाद्य निगम के सवाईमाधोपुर के ठेकेदार हरकचंद बंसल/बंसल एन्टरप्राईजेज के यहॉ माल चढ़ाने व उताने का काम करता था, जबकि उसने अपनी जिरह में यह स्पष्ट कथन किया है कि वह माल चढ़ाने व उताने का काम नहीं करता था, वह केवल गेहूं सोरने (इकठ्ठा) करने का काम करता था। इस प्रकार प्रार्थी, अप्रार्थी के यहॉ क्या कार्य करता था, इस सम्बन्ध में उसकी साक्ष्य में गम्भीर विरोधाभास है।

9. प्रार्थी के स्टेटमेन्ट आफ क्लेम तथा शपथ–पत्र से यह भी प्रकट होता है कि अप्रार्थी का माल उनके गोदाम में ले जाने की व्यवस्था रेल्वे वेगन द्वारा होती थी जिसके लिए सवाईमाधोपुर रेल्वे यार्ड से निगम गोदाम तक रेल्वे लाईन डली हुई है। रेल्वे वेगन को निगम परिसर में लाने व ले जाने के लिए परिसर के पीछे रेल्वे लाईन के ऊपर एक फाटक बना हुआ है जिसे रेल्वे फाटक के नाम से जाना जाता है। उसने स्टेटमेन्ट ऑफ क्लेम में यह भी कथन किया है कि निगम में काम करने के लिए कामगारों को परिचय–पत्र दिये जाते थे, परन्तु प्रार्थी ने न्यायाधिकरण के समक्ष जो परिचय–पत्र प्रस्तुत किया है वह दि.15/04/90 का जारी किया गया है, पूर्व का कोई परिचय–पत्र उसके द्वारा प्रस्तुत नहीं किया गया है जिससे यह प्रकट नहीं होता है कि प्रार्थी ने वर्ष 1990 के पूर्व के वर्षो में अप्रार्थी के यहॉ कितने दिन कार्य किया है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम तथा उसके शपथ–पत्र के आधार पर स्वयं यह स्वीकार किया है कि अप्रार्थी के गोदामों में जाने के लिए रेल्वे का एक फाटक बना हुआ है जिस पर प्रवेश करने पर गेट पास बनाया जाता है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह भी कथन किया है कि प्रार्थी की गेट एन्ट्री रजिस्टर के आधार पर गेट एन्ट्री 214 दिन दर्शायी गयी है। इससे यही प्रकट होता है कि अप्रार्थी पक्ष द्वारा गेट एन्ट्री रजिस्टर में आवश्यकतानुसार एन्ट्री की जाती थी तथा प्रार्थी की भी एन्ट्री की गयी है, परन्तु प्रार्थी ने अपनी सम्पूर्ण साक्ष्य में यह तथ्य कहीं नहीं बतलाया है कि उस व्यक्ति का नाम क्या है जिसकी प्रविष्टि रजिस्टर में 254 दिन की उपस्थिति के आधार पर उसका चयन विभागीयकरण हेतु कर लिया गया है। प्रार्थी ने महत्वपूर्ण तथ्य न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया है जिससे प्रकट होता है कि ऐसे किस व्यक्ति का विभागीयकरण हेतु चयन कर लिया गया जिसकी उपस्थिति प्रार्थी से कम थी। प्रार्थी ने उस ठेकेदार को भी पक्षकार नहीं बनाया है जिसके यहॉ वह वर्ष 1988 से उसके कथनानुसार कार्य करता था। प्रार्थी के कथनानुसार वह हरकचंद बंसल/बंसल एन्टरप्राईजेज के यहॉ कार्य करता था तथा उसकी उपस्थिति उसके अनुसार ठेकेदार द्वारा संधारित रजिस्टर में की जाती थी, परन्तु प्रार्थी ने उस ठेकेदार को पक्षकार नहीं बनाया है, जबकि इस सम्बन्ध में शुरू से ही अप्रार्थी पक्ष ने गम्भीर आपत्ति की है। यदि प्रार्थी किसी ठेकेदार के यहॉ कार्य करता था तो उसे पक्षकार बनाया जाना आवश्यक है तथा प्रकरण के निस्तारण हेतु उसके द्वारा किसी संधारित रजिस्टर को भी न्यायाधिकरण में प्रस्तुत करना आवश्यक हो जाता है। प्रार्थी ने ठेकेदार द्वारा संधारित ऐसे किसी रजिस्टर को ना तो न्यायाधिकरण में प्रस्तुत किया है व ना ही उसकी मूल या सत्यापित प्रति को प्रस्तुत किया है व ना ही ऐसे रजिस्टर को तलब करवाने के लिए किसी प्रकार का कोई प्रार्थना–पत्र ही न्यायाधिकरण में प्रस्तुत किया है, ऐसी स्थिति में प्रार्थी यह तथ्य न्यायाधिकरण के समक्ष साबित करने में असफल रहा है कि किसी ठेकेदार द्वारा उसकी उपस्थिति का संधारण रजिस्टर में किया जाता था जिसमें उसकी उपस्थिति अधिक होती बजाय गेट एन्ट्री रजिस्टर के। अपने द्वारा प्रस्तुत तथ्यों को सिद्ध करने का भार प्रार्थी पर था जिसे मौखिक व दस्तावेजी साक्ष्य से साबित करने का प्रथम दायित्व उसी का था, परन्तु प्रार्थी ऐसा करने में असफल रहा है। प्रार्थी ना तो उस व्यक्ति का नाम न्यायाधिकरण में बता सका है जिसकी 254 उपस्थिति के आधार पर उसका चयन विभागीयकरण के लिए कर लिया गया व ना ही ऐसे ठेकेदार को पक्षकार बनाया गया है जिसके द्वारा उपस्थिति रजिस्टर संधारित किया जाता था, ऐसी स्थिति में अपने द्वारा प्रस्तुत तथ्यों को सिद्ध करने में प्रार्थी पूर्णतया असफल रहा है।

10. **अप्रार्थी ने अपने जवाब स्टेटमेन्ट आफ क्लेम के समर्थन में रामेश्वर प्रसाद कछवाहा पूर्व सहायक प्रबन्धक तथा सीताराम शर्मा पूर्व सहायक प्रबन्धक की साक्ष्य का अवलम्ब लिया है। इन दोनों साक्षियों ने अपने शपथ–पत्र में स्पष्ट रूप से कथन किया है कि सवाईमाधोपुर में विशेष परिस्थितियों के कारण श्रमिकों की वरीयता निश्चित करने के लिए वृहत गोदाम, सवाईमाधोपुर इकाई जहॉ ठेकेदार श्रम पद्धति का निषेध किया गया, के गेट एन्ट्री रजिस्टर को आधार मानकर यूनियन के प्रतिनिधियों की सहभागिता से एवं गोदाम पर लम्बे समय से कार्यरत कर्मचारी जो श्रमिकों की पूरी पहचान रखते थे, की सामूहिक सेवायें लेते हुए श्रमिकों की वरीयता पुनः प्रमाणित करने का कार्य किया गया तथा पूरक अभिलेखों के रूप में जहॉ आवश्यक समझा गया, ठेकेदार द्वारा उपलब्ध करवाये गये अभिलेखों का भी परीक्षण किया गया।** इन साक्षियों ने अपने शपथ–पत्र में यह भी कथन किया है कि निगम प्रबन्धक एवं यूनियन प्रतिनिधियों की संयुक्त देख–रेख में प्रवेश पंजिका के आधार पर वर्ष 88–89, 89–90 व 90–91 के वित्तीय वर्षो की उपस्थिति की गणना कर मासिक, वार्षिक, त्रिवार्षिक उपस्थिति प्रपत्र तैयार किये गये, उनके आधार पर वरीयता सूची तैयार की गयी जो निगम प्रबन्धन के

अधिकारियों एवं श्रमिक यूनियन के पदाधिकारियों के संयुक्त हस्ताक्षरों से दिनांक 07/02/92 को जारी की गयी, तदनुसार नियुक्ति–पत्र देने की प्रक्रिया शुरू की गयी जिसके मिनिट की प्रति दिनांक 07/02/92 प्रदर्श एम.8 है। इन साक्षियों ने यह भी कथन किया है कि श्रमिकों के विभागीयकरण की पात्रता सुनिश्चित करने के लिए सवाईमाधोपुर की दोनों भण्डारण इकाईयों पर एक ही ठेकेदार द्वारा कार्य संचालित की संवेदनशीलता के तथ्य को ध्यान में रखकर ही मुख्यालय नई दिल्ली द्वारा जारी परिपत्र दिनांक 11/06/91 प्रदर्श एम.9 में निहित दिशा–निर्देशों का उपयोग करते हुए निगम के अभिलेख के रूप में गेट एन्ट्री रजिस्टर को महत्वपूर्ण दस्तावेज मानते हुए उसकी प्रक्रिया का अनुसरण किया गया, जिसके फलस्वरूप पूर्ववर्ती तथा पश्चातवर्ती 144 श्रमिकों में से केवल 13 ही श्रमिक का परिवर्तन आया जिनकी उपस्थितियां कम पायी गयी। इन साक्षियों के शपथ–पत्र में यह भी अंकन है कि चूँकि उक्त परिस्थितियों में गेट एन्ट्री रजिस्टर ही न्यायसंगत विकल्प था इसलिए इसी को अपनाया गया तथा यही ठेकेदारों द्वारा वृहत गोदाम पर लगाये गये कर्मचारियों की हाजिरी प्रमाणित करने का युक्तियुक्त आधार है।

11. मैंने पत्रावली पर उपलब्ध उन समस्त दस्तावेज का भी अवलोकन किया जो अप्रार्थी द्वारा प्रदर्श एम.6 लगायत एम.12 के रूप में प्रस्तुत किये गये हैं। पत्रावली पर जिला प्रबन्धक, भारतीय खाद्य निगम द्वारा प्रार्थी रामफूल बैरवा द्वारा दस्तावेज तलबी के प्रार्थना–पत्र दिनांक 02/04/96 के अनुसरण में प्रस्तुत दस्तावेजों की सूची है जो कुल 190 श्रमिकों से सम्बन्धित है। प्रदर्श एम.2 अप्रार्थी निगम तथा उसके श्रमिकों के मध्य दिनांक 12/04/91 को हुए समझौता है तथा इसके साथ वह सूची है जिस पर अप्रार्थी के गोदाम में विभागीयकरण किया गया। प्रदर्श एम.7 विभागीयकरण हेतु बफर कॉम्पलेक्स, सवाईमाधोपुर के सम्बन्ध में जारी आदेश है। प्रदर्श एम.8 व एम.9 का हवाला पूर्व में दिया जा चुका है। प्रदर्श एम.10 सहायक श्रम आयुक्त(के) कोटा का असफल वार्ता प्रतिवेदन है। प्रदर्श एम.11 श्रम मंत्रालय, भारत सरकार द्वारा लिखा गया पत्र है जिसके द्वारा यह माना गया कि हरियाणा, मध्यप्रदेश, गुजरात, महाराष्ट्र, राजस्थान व उत्तरप्रदेश के निगम तथा उसकी श्रमिकों के मध्य विवाद अस्तित्व में नही है क्योंकि श्रमिकों की नियुक्ति जरिए ठेकेदार की गयी थी। प्रदर्श एम.12 परिपत्र दिनांकित 13/04/94 है जिसके अनुसार यह माना गया कि श्रमिकों की नियुक्ति अप्रार्थी निगम द्वारा नहीं करने के कारण उनके मध्य एम्पलोई–एम्पलोयर रिलेशनशिप नहीं बनती है। अप्रार्थी पक्ष के साक्षी रामेश्वर प्रसाद ने अपनी जिरह में यह भी स्वीकार किया है कि उसने सवाईमाधोपुर बफर कॉम्पलेक्स गोदाम देखा है तथा बफर कॉम्पलेक्स के रेल्वे साईड एक गेट था। प्रदर्श डबल्यू.1 में दो द्वारा दिखाये गये हैं जिनमें मुख्य द्वार प्रदर्श डबल्यू.1 में ''ए'' दर्शाया गया है। उसने यह सुझाव गलत बताया है कि श्रमिक दोनों गेट से आते–जाते हों बल्कि मुख्य द्वार से ही ड्यूटी पर आते थे। वह ''बी'' गेट पर अनेक बार गया है। उसने यह भी कथन किया गया है कि ''ए'' गेट से आते–जाते श्रमिकों को उसने कई बार देखा है। उसे पता नहीं कि रामफूल और हनुमान, बोरडा गांव के रहने वाले हैं अथवा नहीं। उसने ठेकेदार का हाजिरी तथा भुगतान रजिस्टर देखा था तथा जब श्रमिकों की सूची बनायी थी तब यूनियन के प्रतिनिधि उपस्थित थे जिन्होंने उन्हें पहचाना था। **साक्षी ने यह भी कथन किया है कि वर्ष 87–88, 88–89, 89–90 व 90–91 की उपस्थिति के आधार पर उनकी वरीयता सूची बनायी थी जो ठेकेदार का रजिस्टर, ई.पी.एफ. कन्ट्रीब्यूटरी की सूची और गेट एन्ट्री रजिस्टर को देखकर तैयार की थी। गवाह ने यह भी कथन किया है कि ठेकेदार का उपस्थिति रजिस्टर, पेमेन्ट ऑफ वेजेज रजिस्टर, एम्पलोई पी.एम. कंट्रीव्यूशन रजिस्टर ठेकेदार के पास ही रहते हैं। उसने यह सुझाव गलत बताया है कि पेमेन्ट शीट से उन्होंने वेरीफिकेशन नहीं किया हो।** प्रदर्श एम.13 आकस्मिक श्रमिकों का वर्षवाईज एब्सट्रेक्ट है। **अप्रार्थी के दूसरे साक्षी सीताराम शर्मा ने अपनी जिरह में उक्त प्रकार के ही कथन किये हैं तथा यह भी स्वीकार किया है कि हरकचंद बंसल ठेकेदार को हम उसका बिल, ई.पी.एफ. व पेमेन्ट शीट को चैक करके भुगतान करते थे। इसने यह सुझाव गलत बताया है कि गेट एन्ट्री रजिस्टर श्रमिकों की हाजिरी के लिए काम नहीं आता हो बल्कि श्रमिकों की हाजिरी इसी रजिस्टर के आधार पर प्रमाणित होती थी। विभागीकरण के सम्बन्ध में विवाद पैदा ना हो इस कारण यूनियन के सदस्यों को शामिल किया था। साक्षी ने यह सुझाव गलत बताया है कि उनके यहॉ दो–तीन गेट हों। यह भी कथन किया है कि श्रमिकों की गेट एन्ट्री से हाजिरी होती थी लेकिन विभागीयकरण होने के बाद कार्यालय में हाजिरी होती है।** यह सुझाव गलत बताया है कि आसपास के गांव के लोग अपनी सुविधानुसार अन्दर आते हों। यह भी कथन किया है कि ठेकेदार, विभागीयकरण पूर्व से विवादग्रस्त श्रमिकों तथा अन्य श्रमिकों की हाजिरी अपने हिसाब से लगाता था। विभागीयकरण से पूर्व उक्त श्रमिक ठेकेदार के श्रमिक थे। उन्होंने गेट रजिस्टर, ठेकेदार का पेमेन्ट रजिस्टर देखकर विभागीयकरण हेतु सूची बनायी थी जो डबल एस्योर करते हुए गेट एन्ट्री रजिस्टर को सबसे अहम दस्तावेज माना था, दूसरे रिकार्ड को दूसरा दर्जा दिया था। इस प्रकार अप्रार्थी द्वारा प्रस्तुत साक्ष्य से साबित होता है कि अप्रार्थी निगम के गोदमों में प्रवेश करने के लिए गेट एन्ट्री रजिस्टर को ही प्राथमिकता दी गयी थी क्योंकि यही एक दस्तावेज था जो अप्रार्थी निगम द्वारा सही माना गया। अप्रार्थी पक्ष के साक्षियों की साक्ष्य से यह भी साबित होता है कि ठेकेदार का उपस्थिति रजिस्टर विभागीयकरण हेतु गेट रजिस्टर व ठेकेदार का पेमेन्ट रजिस्टर भी देखा था, परन्तु गेट एन्ट्री रजिस्टर को सबसे अहम दस्तावेज माना गया। गेट एन्ट्री रजिस्टर को महत्वपूर्ण दस्तावेज मानने में अप्रार्थी द्वारा कोई वैधानिक त्रुटि नहीं की गयी है।

12. अप्रार्थी पक्ष के अनुसार निगम के गोदाम में प्रवेश हेतु केवल एक ही मुख्य द्वार था जिसमें गेट एन्ट्री की जाती थी जो श्रमिक की उपस्थिति का सबसे महत्वपूर्ण दस्तावेज प्रमाणीकरण हेतु माना गया। प्रार्थी यह तथ्य साबित करने में असफल रहा है कि अप्रार्थी के बफर गोदाम में उपस्थिति देने के लिए दूसरे गेट से भी प्रवेश कर उपस्थिति दी जा सकती हो वह यह तथ्य भी साबित करने में असफल रहा है कि वह अप्रार्थी के गोदाम के दूसरे गेट के पास के गांव में रहता था तथा वहीं से गोदाम में आता–जाता था। जब निगम के गोदाम में उपस्थित होने के लिए एक गेट विशेष बनाया गया है जहॉ पर श्रमिकों की उपस्थिति का इन्द्राज करने का प्रावधान है तो किसी भी श्रमिक को बफर गोदाम में प्रवेश करने हेतु उसी से उपस्थित होना चाहिए तथा उसमें दर्ज प्रविष्टि ही वास्तविक प्रविष्टि/उपस्थिति मानी जायेगी। प्रार्थी अपने द्वारा प्रस्तुत तर्को को साक्ष्य द्वारा साबित करने में असफल रहा है व वह किसी भी प्रकार का अनुतोष न्यायाधिकरण से प्राप्त करने का अधिकारी नहीं है, क्योंकि उसने उस ठेकेदार को न्यायाधिकरण में पक्षकार नहीं बनाया है जिसके द्वारा उसे अप्रार्थी पक्ष के गोदाम में कार्य करने हेतु नियोजित किया गया था। उसने अप्रार्थी पक्ष के यहॉ उपस्थिति दर्शाने हेतु किसी भी प्रकार का उपस्थिति रजिस्टर या दस्तावेज पेश नहीं किया है जिससे यह साबित हो कि वह किस–किस अवधि, किस–किस माह में कितने–कितने दिन अप्रार्थी के यहॉ कार्य पर उपस्थित हुआ। वह यह तथ्य भी साबित नहीं कर सका है कि वह अप्रार्थी के यहॉ माल चढ़ाने व उतारने का कार्य करता था या गेहूं सोरने(इकठ्ठा करने) का कार्य करता था। प्रार्थी द्वारा इस सम्बन्ध में स्टेटमेन्ट आफ क्लेम, शपथ–पत्र तथा उसकी जिरह में गम्भीर विरोधाभास है। शपथ–पत्र में उसने माल चढ़ाने–उतारने का कार्य ही अंकित किया है, जबकि जिरह में गेहूं सोरने/इकठ्ठा करने का कार्य बताया है। प्रार्थी महत्वपूर्ण तथ्यों को भी न्यायाधिकरण के समक्ष प्रस्तुत एवं साबित नहीं कर सका है, उसने ऐसे किसी श्रमिक का नाम नहीं बताया है जिसने उससे कम अवधि में कार्य किया हो तथा विभागीयकरण का उसे लाभ प्राप्त हुआ हो। ऐसे किसी श्रमिक का भी नाम नहीं बताया है जिसने 254 दिन कार्य किया हो तथा उसका विभागीयकरण में चयन कर लिया गया हो। उसके द्वारा Vague कथन न्यायाधिकरण में उल्लेख किये गये हैं जिनकी सत्यता एवं विश्वसनीयता को प्रमाणित करने में वह असफल रहा है। अप्रार्थी द्वारा प्रस्तुत उक्त न्यायदृष्टांत **''एआईआर 1954 मद्रास 1045–मैनेजमेन्ट**

ऑफ मैसर्स ऑडियन सिनेमा बनाम वर्कर्स ऑफ सागर टॉकिज" हस्तगत प्रकरण पर लागू होता है। हस्तगत प्रकरण में भी प्रार्थी ठेकेदार द्वारा नियुक्त श्रमिक था तथा वह कभी भी अप्रार्थी पक्ष द्वारा नियुक्त नहीं किया गया था इसलिए औद्योगिक विवाद अधिनियम की धारा 2(k) के अनुसार प्रार्थी तथा अप्रार्थी के मध्य किसी भी प्रकार से नियोजक व नियोक्ता के सम्बन्ध नहीं थे तथा प्रार्थी को धारा 10 के अनुसार विवाद उठाने का अधिकार नहीं है।

13. अतः प्रकरण के समस्त तथ्यों, परिस्थितियों, प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम, मौखिक व दस्तावेजी साक्ष्य तथा अप्रार्थी द्वारा प्रस्तुत जवाब स्टेटमेन्ट आफ क्लेम, साक्ष्य तथा दस्तावेज से प्रार्थी यह साबित करने में असफल रहा है कि उससे कम अवधि में कार्य करने वाले व्यक्ति को विभागीयकरण के परिणामस्वरूप चयन कर लिया गया हो तथा प्रार्थी का चयन नहीं किया गया हो। फलतः प्रार्थी श्रमिक, अप्रार्थी से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी घोषित होने योग्य नहीं है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 24/06/93 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक रामफूल बैरवा प्रकरण के समस्त तथ्यों, परिस्थितियों, प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम, मौखिक व दस्तावेजी साक्ष्य तथा अप्रार्थी द्वारा प्रस्तुत जवाब स्टेटमेन्ट आफ क्लेम, साक्ष्य तथा दस्तावेज से यह साबित करने में असफल रहा है कि उससे कम अवधि में कार्य करने वाले व्यक्ति को विभागीयकरण के परिणामस्वरूप चयन कर लिया गया हो तथा प्रार्थी का चयन नहीं किया गया हो। फलतः प्रार्थी श्रमिक, अप्रार्थी से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी घोषित होने योग्य नहीं है।

अधिनिर्णय आज दिनांक 20/11/2018 को खुले न्यायाधिकरण में सुनाया जाकर हस्ताक्षरित किया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जावे।

विक्रान्त गुप्ता, न्यायाधीश

नई दिल्ली, 24 जनवरी, 2019

का. आ. 205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 58/2007) को प्रकाषित करती है, जो केन्द्रीय सरकार को 09.01.2019 को प्राप्त हुआ था।

[सं. एल-22012/200/2007–आईआर (सीएम-II)]

राजेंद्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2019

S.O. 205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2007*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 09.01.2019.

[No. L-22012/200/2007 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 14th day of November, 2018

INDUSTRIAL DISPUTE No. 58/2007

Between:

The General Secretary (Sri Riyaz Ahmed),
Singareni Miners & Engg. Workers Union (HMS)
Qtr. No.C-34, Sector-I, Godavarikhani.
Karimangar – 505209. … Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-II Divn., GDK-8 Inc., Colony(P.O.)
Godavarikhani, Karimnagar - 505211. … Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/200/2007-IR(CM-II) dated 24.9.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of M/s. SCCL in imposing the punishment of reduction of four increments in his scale of pay with cumulative effect from 1.11.2004 vide office order No. RG3/PER/R/008/1294 dated 15.10.2004 in respect of Sri A. Narsinga Rao is legal and justified? If not, to what relief the workman is entitled?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 58/2007 and issued notices to both the workman and the management. Thereafter, both the parties appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The workman was initially appointed as EP Operator at OC-III project, on 24.10.1983. While working as such he was issued with a charge sheet dated 23.7.2002, alleging that on account of negligence and mal-operation, Dumper No.H-375, sustained damages. As such, he was alleged to have committed misconduct under company's Standing Orders No.25.5 and 25.4. The workman submitted his explanation dated 28.7.2002 explaining the circumstances under which it was taken place. But without considering the same in proper prospective enquiry was initiated. The workman was not given any opportunity much less valid in nature. Neither the procedure of the enquiry was explained nor the co-worker was permitted to assist him. The co-workman permitted to sit in the Enquiry, only as an observer, but he was not permitted to assist the workman. During the course of enquiry, the Presenting Officer examined MW1 to MW5 and on behalf of workman, DW1 was examined, apart from himself. On completion of the enquiry, the Enquiry Officer submitted his report holding the charges as proved. The workman was asked to submit his explanation on the enquiry report vide notice dated 2/9.8.2004. The workman has submitted his report on 31.8.2004 stating that without considering his representation in a pre-determined manner order dated 5.10.2004 was issued by the authority imposing the penalty of reversion to a lower stage by reducing four increments with cumulative effect. It is stated that On 6.7.2002 in 3rd shift, the workman was driving dumper No.H-375, and had made 16 trips continuously. At about 6.15 AM he observed that smoke was coming out from the wheel brake drum and was pulling towards the left side. He informed the same to the Shift Head Overman immediately and on his instruction, water tanker was brought for spraying the water. As the brake drum was already got heated, more smoke came out and the colour of the brake drum was also changed. Though the brake drum was left as it was struck, it could have automatically cooled down. As a result of spraying of water the damage was caused to the brake wheel, but not otherwise. There was neither negligence nor mal-operation on the part of the workman. The Enquiry Officer relied upon the alleged report made by MW3 behind the back of the workman. Neither the said report furnished to the workman nor the same was produced during the course of the enquiry but exclusively relying upon the said report the Enquiry Officer came to the conclusion that the charges levelled against the workman were proved and basing on such report penalty was imposed on this workman. It is stated that such an action on the part of the Respondent is unjustified and untenable. MW3 who stated to have conducted inspection behind the back of the workman submitted his report, and stated to have opined that, "in my opinion the operator might have engaged retarded brake partially and operated the dumper." It is stated that such an opinion is only assumptive and basing on such assumptive statement, the workman was imposed with such a heavy penalty. Whereas, MW4 deposed that, "in my opinion, the damages of the machine was due to over heat of oil during the operation of the dumper." These two opinions run contrary to each other. As a matter of fact during the course of cross examination, MW4 accepted that, if the retarded brake is applied either continuously or partially, the same would be indicated in the cabin room and admittedly no such indication was given in the cabin room. Thus, the finding of the Enquiry Officer that, "the workman partially operated retarded brakes, which caused burning machine parts due to over heat", is nothing but a perverse finding. Basing on the presumptive and incorrect statement of MW3, the workman ought not have to be imposed the penalty and the approximate cost of damages are Rs.5.00 lakhs. Whereas, MW4 who stated to have conducted inspection deposed that, during his inspection only the clutch plates, dumper plates and seals were damaged. Therefore, it is not known on what basis MW3 could contend that the dumper suffered various damages mentioned in the chargesheet. The said inspection was done by MW3 behind the back of the workman. It is also not known how MW3 could assess the cost of the damage as 5 lakhs. Unfortunately, the Enquiry Officer blindly followed the version of MW3. The findings of the Enquiry Officer are perverse in nature. The penalty imposed on such finding which is liable to be set aside. It is seen from the evidence of MW5 that, spraying of water on a heated dumper is not a correct procedure. The workman is in no way responsible for the alleged damage caused to the dumper. But, ignoring the valid evidence and without considering the submission of the workman the impugned order was issued. It is stated that due to the penalty imposed against the workman he himself and also his family members are put to lot of hardships. There is no justification on the part of the Respondent to impose such a penalty when the workman is not at fault. Hence, the office

order bearing number RG3/PER/R/008/1294 dated 15.10.2004 issued by the General Manager, RG-III Area, in respect of Sri A. Narsinga Rao be declared as illegal and is liable to be set aside.

3. Respondent filed counter with the averments in brief as follows:

While admitting some of the facts to be true, and denying some of the facts, the Respondent in its counter has stated that the dumper attached to the workman was working got damaged owing to his mal operations and gross negligence. The cost incurred for its repairs is estimated at Rs.5 lakhs. Besides, it took some period for repair and to put in operation. Considering that the workman is to be held responsible for the damages, chargesheet dated 23.7.2002 was issued under Company's Standing Orders Nos.25.5 and 25.24 which reads as follows:

"25.5 : Neglect of work;

25.24: Sabotage or causing wilful damage to work in progress or to property of the Company."

The workman acknowledged the said chargesheet and submitted his written explanation denying the charges, but as it was not found satisfactory an order was passed to conduct a domestic enquiry, in which the workman participated fully and fair opportunity was given to him to defend his case. The principles of natural justice were complied with during the enquiry. On conclusion of the enquiry the Enquiry Officer submitted his report according to which charges levelled against the workman were found proved. Show cause notice dated 2/9.8.2004 including copy of the enquiry proceeding and findings was issued to the workman calling upon him to give his representation. In response to the above notice the workman submitted his representation dated 31.8.2004, as he has not represented anything against the proceedings of the enquiry or findings of the Enquiry Officer in his representation, thereafter, considering the proved charges which are grave and serious, punishment ought to have been awarded is dismissal from service. But taking of the material facts into consideration and also considering the representation submitted by the workman, Disciplinary Authority has awarded lesser punishment of reduction of four increments in his pay with cumulative effect from 1.11.2004 vide order dated 15.10.2004. The workman has not preferred any appeal invoking Clause-29 of the Company's Standing Orders questioning the correctness of the penalty imposed. On the other hand, after one year and 9 months, the Petitioner raised the industrial dispute. The contention of the workman is in a routine and predetermined manner. The office order dated 15.10.2004 was issued is not correct. The contention of the Petitioner wherein it has been stated that the office order dated 15.10.2004 was issued is not correct and his further contention was that there was negligence nor mal operation on the spot and that the Enquiry Officer relied upon the alleged report prepared by MW3 behind the back of the workman and that the punishment was awarded on presumptive and incorrect statement. The contention of the Petitioner that he is not responsible for the damage, is also totally incorrect. With the above averments, the Respondent submitted for dismissal of the claim statement with costs.

4. **The points for determination in this case are**:

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in imposing the punishment of reduction of 4 (four) increments in scale of pay of the Petitioner with cumulative effect from 1.11.2004 vide office order No.RG3/PER/R/008/1294 dated 15.10.2004 is legal and justified?

II. If not, what relief the Petitioner workman is entitled to?

5. I have already heard the Learned Counsels of both the parties in this matter.

6. The domestic enquiry conducted by the Respondent Management is held legal and valid vide order dated 22.4.2014.

7. **Point No. I**: The Learned Counsel for the Petitioner submitted that without any fault of the Petitioner workman punishment of deduction of four increments with cumulative effect was imposed from 1.11.2004 which is illegal. The Enquiry Officer has not conducted the enquiry properly. The findings of the Enquiry Officer are perverse in nature and basing on the evidence of MW3, the Enquiry Officer submitted that the charge levelled against the workman is proved, even though sufficient evidence is not available against the workman the charge is proved. It is also contended that even though sufficient evidence is available in favour of the Petitioner/workman to exonerate him from the charges, the Enquiry Officer with a predetermined mind submitted the enquiry report holding the charges proved. The workman is no way responsible for the alleged damage caused to the dumper. The Enquiry Officer exonerating the valid evidence available in favour of the workman without considering the submission of the workman Petitioner has imposed such a punishment. Due to the penalty imposed against the workman, he himself and his family members are put to lot of hardship. There is no justification on the part of the Respondent to impose penalty of deduction of four increments with cumulative effect vide order No. RG3/PER/ R/ 008/ 1294 dated 15.10.2004 and the same is liable to be set aside.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent submitted that due to the mal operation and gross negligence of the workman, the dumper was damaged. Costs incurred for its repair is remitted of Rs.5 Lakhs. Besides this, it took some years for repairing and to put in operation. The workman is held responsible for the damage caused to the dumper. In the enquiry it has already been proved that due to the careless and negligence of the workman the Respondent Management suffer a lot. The workman fully participated in the enquiry and put forth

his defence. But after considering all the materials available on record along with the evidence adduced by the parties, the Enquiry Officer submitted his report and the charges levelled against the workman was proved. The charges proved against the workman are grave and serious in nature and the punishment ought to have been awarded as dismissal from service, but taking all the material facts into consideration and considering the representation submitted by the workman the Disciplinary Authority has awarded the lesser punishment of deduction of four increments with cumulative effect from 1.11.2004 vide order dated 15.10.2004. The workman has not preferred any appeal invoking Clause 29 of Company's Standing Orders questioning the correctness of the penalty imposed on him and on the other hand, after one year and nine months of the order he raised the industrial dispute and submitted the claim applications with a routine manner which should not be accepted. The claim of the workman as well as the Petitioner union is totally false and is devoid of merit. If any exemplary punishment will not be given, the workmen would not be serious in their duties. Since the lesser penalty has been imposed on the workman, it needs no interference.

9. On consideration of the rival contention of both sides, it is seen that the Department has conducted a domestic enquiry, in the enquiry the workman has fully participated and the enquiry has been conducted following the principles of natural justice. Both the parties have also challenged the validity of the domestic enquiry. But after hearing, this court vide order dated 22.4.2014, held that the domestic enquiry conducted by the Department is held legal and valid. In fact, even though there was provisions to prefer appeal under Clause 29 of the Company's Standing Orders questioning the correctness of the penalty imposed, the workman has not invoked the above clause by preferring an appeal. The workman waited after passing of the impugned order for a period of one year and nine months and thereafter raised this industrial dispute. First of all the workman should have preferred an appeal before the Appellate Authority. It is not known what prevented the workman to prefer an appeal before the Appellate Authority claiming his innocence. When the domestic enquiry conducted by the Department is found legal and justified, only four increments have been deducted with cumulative effect with effect from 1.11.2004 vide order dated 15.10.2004 and when no appeal has been preferred challenging the impugned order, in such a circumstances no justifiable ground is available for this Tribunal to interfere in the order passed by the Disciplinary Authority, and as such the order passed by the Respondent is found to be legal and justified which needs no interference.

Thus, Point No.I is answered negatively against the Petitioner.

10. **Point No.II**: In view of the findings made in Point No.I, the Petitioner union is not entitled to get any relief.

Thus, Point No.II is answered accordingly.

Result:

The action of the management of M/s. SCCL in imposing the punishment of reduction of four increments in the scale of pay with cumulative effect from 1.11.2004 vide office order No. RG3/PER/R/008/1294 dated 15.10.2004 in respect of Sri A. Narsinga Rao is legal and justified. The workman is not entitled to any relief.

Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 14th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 जनवरी, 2019

का. आ. 206.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फूड कारपोरेशन ऑफ़ इंडिया एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 16/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-22012/64/एफ/1993–आईआर (सीएम-II)]

राजेंद्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th January, 2019

S.O. 206.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 16/1993) of the Industrial Tribunal-cum-Labour Court, KOTA as shown in the Annexure, in the Industrial dispute between the employers in relation to the Food Corporation of India and their workman, which were received by the Central Government on 21.01.2019.

[No. L-22012/64/F/1993-IR (CM-II)]

RAJENDER SINGH, Section Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण(केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी– श्री विक्रान्त गुप्ता, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक:औ.न्या.(केन्द्रीय)–16 / 1993
दिनांक स्थापित:26 / 06 / 1993

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश
क्रं. एल–22012 / 64 / एफ / 93–आई आर (सी. II)
दिनांक 24 / 06 / 1993

निर्देश / विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

हनुमान प्रसाद बैरवा पुत्र ग्यारसीलाल बैरवा, मु.पोस्ट खटुपुरा तहसील व जिला सवाईमाधोपुर। ...प्रार्थी श्रमिक

एवं

प्रबन्धक, भारतीय खाद्य निगम, सवाईमाधोपुर। ...अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री पुरुषोत्तम दाधीच
अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री सी.बी.सोरल

दिनांक : 22.11.2018

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक **आदेश दिनांक 24 / 06 / 1993** के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त ''अधिनियम'' से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:–

> ''क्या प्रबंधन, भारतीय खाद्य निगम, सवाईमाधोपुर की यह कार्यवाही कि ठेकेदार द्वारा रखे गये हाजरी रिकार्ड को आधार न मान कर द्वार प्रविष्ट पंजिका (Gate Entry Register) को आधार मान कर ठेका मजदूरों को विभागीयकरण कराना उचित एवं न्याय संगत है। यदि नहीं तो कर्मकार श्री हनुमान प्रसाद बैरवा पुत्र श्री ग्यारसीलाल बैरवा किस अनुतोष का हकदार है और किस तारीख से।''

2. निर्देश / विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना / नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से स्टेटमेन्ट ऑफ क्लेम न्यायाधिकरण के समक्ष प्रस्तुत कर संक्षिप्तः यह अभिव्यक्त किया गया है कि प्रार्थी, भारतीय खाद्य

निगम, सवाईमाधोपुर में ठेकेदार हरकचंद बंसल/बंसल एण्टर प्राईजेज, के यहॉ वर्ष 1988 से उक्त निगम का माल चढ़ाने व उतारने का काम निरन्तर करता चला आ रहा है। उक्त निगम का माल अंदर लाने और बाहर ले जाने की व्यवस्था रेल्वे वैगनों द्वारा होती है जिसके लिए सवाईमाधोपुर रेल्वे यार्ड से निगम परिसर के गोदामों तक रेल्वे लाईन डली हुई है जिससे रेल्वे वैगनों को निगम परिसर में लाने और वहॉ से वापस ले जाने का काम करते हैं। रेल्वे इंजिन और वैगनों के आने जाने के लिए निगम परिसर के पीछे रेल्वे लाइन के ऊपर एक फाटक बना हुआ है जो निगम का रेल्वे फाटक के नाम से जाना जाता है। निगम के रेल्वे फाटक के पीछे बसे हुए गांव भडेरडा एवं खटुपुरा नजदीक होने के कारण इन गवाहों में रहने वाले श्रमिक जो निगम में काम करते हैं, वह बहुधा इस रेल्वे फाटक से ही प्रवेश कर अन्दर निगम में काम करने जाते हैं। कामगारों को निगम में काम करने के लिए परिचय–पत्र दिये गये हैं। ठेकेदार अपने मजदूरों की हाजिरी अपने द्वारा रखे गये रजिस्टर में अलग से करता है, मजदूरों को प्रत्येक माह हाजिरी अनुसार वेतन वितरण करता है जो निगम के प्रतिनिधि के समक्ष वितरण करने का प्रावधान है। भारत सरकार के नोटिफिकेशन दिनांक 07/09/90 के द्वारा खाद्य निगम में ठेकेदारी प्रथा समाप्त की गयी और उसके अनुसार निगम में कार्यरत ठेकेदार के श्रमिकों का विभागीयकरण करना अपेक्षित हो गया। खाद्य निगम, सवाईमाधोपुर ने विभागीयकरण की प्रकिया प्रारम्भ की और उसके अन्तर्गत कामगारों की 1 अप्रेल,88 से 31 मार्च, 91 तक तीन वित्तीय वर्षो की उपस्थितियों के गेट पर रखे प्रविष्ठ रजिस्टर का अवलोकन कर गणना की गयी और उसमें उपलब्ध उपस्थितियों को ही आधार मानकर जिस कामगार की उपस्थिति 254 दिन थी, उसका विभागीयकरण में चयन कर लिया गया। चयन के लिए उपस्थितियों की गणना गलत प्रकार से निगम के द्वारा प्रविष्ठ पंजिका(गेट एन्ट्री रजिस्टर) के आधार पर की गयी है जिसमें प्रार्थी की हाजरी 69 दिन दर्शायी है, जबकि वास्तविक और न्यायसंगत आधार, ठेकेदार द्वारा रखे गये हाजरी रिकार्ड के अनुसार होना चाहिए जिसके अनुसार प्रार्थी की हाजरी चयनित श्रमिकों से बहुत ज्यादा होती है। चूँकि प्रार्थी की तरह और श्रमिक जो निगम के रेल्वे फाटक के पीछे नजदीकी गांव भडरेडा और खटुपुर से काम पर आते हैं, वे कभी–कभी पीछे से रेल्वे फाटक में होकर निगम में काम पर आते हैं, उनकी उपस्थिति द्वार प्रविष्ठ पंजिका में नहीं होती, परन्तु ठेकेदार अपने हाजरी रजिस्टर में अवश्य करता है और इसी आधार पर वेतन वितरण करता है। अभिकथित किया गया है कि निगम के प्रबन्धक ने चयन के लिए गेट एन्ट्री रजिस्टर में दर्शायी गयी उपस्थिति को ही आधार मानकर स्टेटमेन्ट तैयार करवाया और उसी आधार पर श्रमिकों को चयन कर लिया जो सत्यता वास्तविकता से परे होने के कारण न्यायसंगत नहीं था। आगे अभिकथित किया गया है कि प्रबन्धक द्वारा जो गेट एन्ट्री रजिस्टर के आधार पर हाजरी का स्टेटमेन्ट तैयार किया गया, उसमें प्रार्थी श्रमिक की मई–जून, 90 की हाजरी जो ठेकेदार के रिकार्ड में दर्ज थी, वह प्रबन्धक के स्टेटमेन्ट में दर्ज नहीं की गयी थी जिससे यह प्रमाणित होता है कि प्रबन्धक द्वारा गलत स्टेटमेन्ट तैयार करवाकर गलत चयन किया गया। पूरे तीन वर्षो का रिकार्ड समझौता अधिकारी के पास उपलब्ध नहीं हो सका अन्यथा ऐसी विसंगतियां और भी सामने आ जाती। यह तथ्य समझौता अधिकारी ने अपने प्रतिवेदन दि.28/02/93 में उल्लेखित किया है। यह भी अभिकथित किया गया कि प्रार्थी की उपस्थिति का रिकार्ड जो ठेकेदार द्वारा रखा जाता है तथा प्रार्थी की ठेकेदार के यहॉ काम की उपस्थिति जहॉ प्रार्थी के उपनाम लीलाराम से उपस्थिति अंकित है, का पूर्ण अवलोकन कर उपस्थिति जोड़ी जावे तो प्रार्थी की उपस्थिति जो चयनित श्रमिक है, उनसे अधिक निकलेगी और उससे प्रार्थी का चयन अवश्यम्भावी है। अन्त में प्रार्थना की गयी है कि अप्रार्थी प्रबन्धक, भारतीय खाद्य निगम, सवाई माधोपुर को पाबन्द किया जावे कि वह प्रार्थी का चयन कर स्थायी विभागीय श्रमिक नियुक्त करे व अन्य श्रमिकों की चयन तिथि से चयन कर उसी अनुसार पिछले वेतन, ग्रेड इत्यादि का लाभ प्रार्थी को प्रदान किया जावे।

4. अप्रार्थी की ओर से उक्त क्लेम का जवाब प्रस्तुत कर प्रारम्भिक आपत्तियों में यह अभिकथित किया गया है कि अप्रार्थी, प्रार्थी का नियोजक नहीं होने व प्रार्थी व अप्रार्थी के मध्य नियोक्ता एवं नियोजक के कोई भी सम्बन्ध नहीं होने के कारण क्लेम सुनवाई योग्य नहीं होकर निरस्तनीय है। प्रार्थी द्वारा क्लेम में वर्णित ठेकेदार हरकचंद बंसल/बंसल एन्टरप्राईजेज जिसके यहॉ माल चढ़ाने व उतारने का कार्य करना दर्शाया गया है, वही उसका नियोजक हो सकता था जिसे आवश्यक पक्षकार होने पर भी पक्षकार नहीं बनाया गया है, अतः अप्रार्थी के विरूद्ध क्लेम निरस्तनीय है। प्रार्थी द्वारा यह भी नहीं बतलाया गया है कि उक्त दोनों ठेकेदार ने अप्रार्थी संस्थान में किस–किस अवधि में व कितने–कितने समय तक कार्य किया है, अतः क्लेम डिफेक्टिव होने के कारण निरस्तनीय है। प्रार्थी द्वारा यह नहीं बताया गया है कि वह अप्रार्थी निगम में विभागीयकृत किये गये किस श्रमिक से एवं किस प्रकार से वरिष्ठ है तथा ऐसे श्रमिक का पूर्ण विवरण निवास स्थान, उपस्थिति आदि को भी नहीं दर्शाया गया है। प्रार्थी श्रमिक निगम में लिये गये अन्य श्रमिकों के विरूद्ध स्वयं को वरिष्ठ बताते हुए अपना केस ला रहा है, किन्हें ऐसे श्रमिकों को क्लेम में पक्षकार नहीं बनाया गया है। यह भी अभिकथित किया गया है कि इस सम्बन्ध में नेतराम व अन्य व्यक्तियों द्वारा खाद्य निगम के मध्यप्रदेश स्थित सागर डिपो के विरूद्ध विवाद उठाया गया था जो भारत सरकार, श्रम मंत्रालय द्वारा अपने आदेश दि. 29/01/93 के द्वारा विवाद को औद्योगिक न्यायाधिकरण के समक्ष न्यायनिर्णयार्थ नहीं भिजवाया गया क्योंकि उसमें यह माना गया कि नेतराम आदि व्यक्तियों के व भारतीय खाद्य निगम के मध्य नियोक्ता व नियोजक के सम्बन्ध नहीं है। यह भी अभिकथित किया गया है कि प्रार्थी, अप्रार्थी का श्रमिक नहीं था इसलिए अप्रार्थी के किसी भी प्रबन्धकीय आन्तरिक कार्य की प्रकिया गत अपनायी जाने वाली कार्य प्रणाली पर उसे आक्षेप उठाने का कोई कानूनी अधिकार प्राप्त नहीं है। क्लेम का आगे जवाब में यह प्रतिवाद किया गया है कि प्रार्थी द्वारा सहायक श्रम आयुक्त (के) कोटा के यहॉ जो प्रार्थना–पत्र दि.01/07/92 को प्रस्तुत किया गया, उसके मद नं.1 में प्रार्थी ने स्वयं को वर्ष 1988 में ठेकेदार हरकचंद बंसल के यहॉ माल चढ़ाने–उतारने का कार्य करना बताया है, जबकि प्रस्तुत क्लेम में वर्ष 1988 में ठेकेदार हरकचन्द बंसल/बंसल एन्टरप्राईजेज के के यहॉ कार्य करना बतलाया है जोकि दोनों अलग–अलग संस्थान है, अतः क्लेम विरोधाभाषी होने से स्वतः ही निरस्तनीय है। प्रार्थी ने न्यायाधिकरण में जो क्लेम पेश किया है, उसमें उक्त प्रार्थना–पत्र दिनांक 01/7/92 में वर्णित तथ्यों का कोई विवरण नहीं दिया है तथा उसमें वर्णित यह कथन गलत है कि रेल्वे लाईन के ऊपर जो फाटक बना हुआ है, वह अप्रार्थी निगम के रेल्वे फाटक के नाम से जाना जाता है। क्लेम का चरण क्रम 3 अप्रार्थी से सम्बन्धित नहीं होने से एवं प्रार्थी के मांग–पत्र दि.01/07/92 जोकि सहायक श्रम आयुक्त(के) कोटा के यहॉ प्रस्तुत किया गया है, इस सम्बन्ध में कोई मांग नहीं होने के कारण पूर्णतया अस्वीकार्य है। इसी प्रकार क्लेम का चरण क्रम 4, 5, 6, 7 भी असंगत होने से अस्वीकार किया गया है। क्लेम के चरण क्रम 8 व 9 के अन्तर्गत पुनः प्रार्थी व अप्रार्थी के मध्य नियोक्ता एवं नियोजक के सम्बन्ध नहीं होने तथा उसे प्रबन्धकीय आन्तरिक कार्य की प्रक्रिया में अपनायी जाने वाली कार्य प्रणाली पर आक्षेप उठाने का कोई भी कानूनी अधिकार प्राप्त नहीं होने की बात दोहराते हुए सम्पूर्ण क्लेम निराधार होने से अस्वीकार कर निरस्त किये जाने की प्रार्थना की गयी है।

5. प्रार्थी श्रमिक की ओर से जवाबुलजवाब भी प्रस्तुत कर यही अभिकथित किया गया है कि प्रार्थी ने जो माल चढ़ाने व उतारने का कार्य किया है वह अप्रार्थी नियोजक का ही माल था, ना कि तथाकथित ठेकेदार का। प्रार्थी के कार्य पर नियंत्रण भी नियोजक के अधिकारियों का ही रहा है। प्रार्थी को यह विवरण रेफ्रेन्स के विवादग्रस्त बिन्दु के अनुसार देने की आवश्यकता नहीं है क्योंकि रेफ्रेन्स में प्रार्थी ने नियोजक की उस प्रक्रिया को चुनौती दी है जिसके अनुसार श्रमिकों का विभागीयकरण किया गया है। प्रार्थी की हाजरी रिकार्ड को आधार मान लिया जावे तो प्रार्थी का विभागीयकरण निश्चित तौर पर है और अप्रार्थी को प्रार्थी का उपस्थिति रिकार्ड के आधार पर ही विभागीयकरण करना चाहिए। यह भी अभिकथित किया गया है कि ठेकेदारों के माध्यम से कार्य करते हुए नियोजक के यहॉ जिन श्रमिकों को 240 दिन या उससे अधिक समय हो गया था, उन्हें नियोजक के यहॉ विभागीयकरण करना था, यानि नियोजक की रोल पर नौकरी पर लेना था। 240 दिन हाजरी की गणना नियोजक ने गेट के एन्ट्री रजिस्टर के अनुसार की थी, जबकि नियोजक के यहॉ पर श्रमिकों को ड्यूटी पर आने–जाने के लिए गेट की एन्ट्री आवश्यक नहीं थी। नियोजक के यहॉ 3 गेट थे तथा किसी भी गेट से श्रमिक ड्यूटी पर आ–जा सकता था। 240 दिन की गणना करने के लिए उपस्थिति का रिकार्ड व वेतन प्राप्त करने का रिकार्ड देखा जाना अनिवार्य था और इसी के जरिये विभागीयकरण होना चाहिए था जो नहीं किया गया। अतः प्रार्थी पिछले सम्पूर्ण वेतन व लाभों सहित विभागीयकरण करवाये जाने का

अधिकारी है जो उसे प्रदान किया जावे।

6. साक्ष्य में प्रार्थी श्रमिक हनुमान प्रसाद बैरवा तथा अप्रार्थी पक्ष की ओर से रामेश्वर प्रसाद कछवाह, सहायक प्रबन्धक तथा सीताराम शर्मा, सहायक प्रबन्धक के शपथ–पत्र प्रस्तुत हुए जिनसे उभयपक्ष के प्रतिनिधिगण द्वारा परस्पर जिरह की गयी। उभयपक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी जिसका यथासमय उल्लेख किया जावेगा।

7. उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गयी जो बहस मुख्यतः उनके द्वारा प्रस्तुत अपने–अपने अभ्यावेदनों पर ही आधारित रही है, अप्रार्थी पक्ष की ओर से लिखित बहस भी प्रस्तुत की गयी, जिसका तथा पत्रावली पर उपलब्ध साक्ष्य व सामग्री का ध्यानपूर्वक परिशीलन किया गया। अप्रार्थी पक्ष ने अपनी बहस/तर्क समर्थन में निम्न न्यायदृष्टांत पेश किया हैः–

''एआईआर 1954 मद्रास 1045–मैनेजमेन्ट ऑफ मैसर्स ऑडियन सिनेमा बनाम वर्कर्स ऑफ सागर टॉकिज'':–

उक्त न्यायदृष्टांत में माननीय उच्चतम न्यायालय द्वारा विधि का निम्न सिद्धांत प्रतिपादित किया हैः–

> ''In a case where the employment has not started at all but is merely in the stage of a contract these can not be an industrial dispute between employer on a person whom he has agreed to take into the employ, but whom he has never employed, any difference between the parties to the contract must be resolved in the ordinary courts by a suit for damages.''

8. मैंने उभयपक्ष के तर्को पर ध्यानपूर्वक मनन किया व पत्रावली का ध्यानपूर्वक अवलोकन किया। पत्रावली के अवलोकन से स्पष्ट है कि प्रार्थी पक्ष ने अपने तर्को के समर्थन में स्टेटमेन्ट ऑफ क्लेम, प्रार्थी के शपथ–पत्र, जिरह तथा प्रार्थी द्वारा प्रस्तुत दस्तावेज प्रदर्श डबल्यू. 1 लगायत डबल्यू. 6 का अवलम्ब लिया है प्रदर्श डबल्यू. 1 नक्शा है जिसमें भारतीय खाद्य निगम के सवाईमाधोपुर स्थित गोदाम तथा रेल्वे ट्रेक को दर्शाया गया है। प्रदर्श डबल्यू. 2 प्रार्थी रामफूल बैरवा द्वारा सहायक श्रम आयुक्त केन्द्रीय को दिया गया प्रार्थना–पत्र है जिसमें उसने निवेदन किया है कि ठेकेदार के रिकार्ड के अनुसार उसकी सेवा उन व्यक्तियों से ज्यादा है जिनकी सेवाओं का विभागीयकरण किया गया है, जबकि प्रार्थी की सेवा का वर्गीकरण नहीं किया गया है। प्रदर्श डबल्यू.3 अप्रार्थी पक्ष द्वारा समझौता अधिकारी के समक्ष प्रस्तुत जवाब है। प्रदर्श डबल्यू.4 प्रार्थी का प्रार्थना–पत्र है जिसमें उसने निवेदन किया है कि उसे रेगूलराईज नहीं किया जाना गलत है तथा अप्रार्थी द्वारा कांट्रेक्टर लेबर का चयन गेट एन्ट्री के द्वारा किया गया है, वह गलत है। इसमें उसने यह भी निवेदन किया है कि कर्मचारी के स्थायीकरण/रेगूलराईजेशन हेतु ठेकेदार द्वारा संधारित हाजिरी रजिस्टर के आधार पर कर्मचारी की हाजिरी मानी जाना चाहिए, ना कि गेट पास के जरिये। प्रदर्श डबल्यू.5 असफल वार्ता प्रतिवेदन है। प्रदर्श डबल्यू.6 अप्रार्थी के समक्ष अपने कार्यरत रहने को सिद्ध करने हेतु परिचय–पत्र संख्या 35 का भी अवलम्ब लिया है जिसमें जारी करने की दिनांक के स्थान पर मात्र 90–91 दर्शाया गया है, परन्तु इससे यह प्रकट नहीं होता है कि प्रार्थी ने अप्रार्थी के यहॉ किस–किस वर्ष में कितने–कितने दिन कार्य किया है। इस प्रकार प्रार्थी द्वारा प्रस्तुत सभी दस्तावेजात प्रदर्श डबल्यू.1 लगायत डबल्यू.6 के अवलोकन से यही प्रकट होता है कि इसमें से कोई भी दस्तावेज ऐसा नहीं है जिससे यह प्रकट होता हो कि प्रार्थी ने अप्रार्थी के सवाईमाधोपुर स्थित गोदाम में कार्य किया हो या कितने दिन किया हो। सम्पूर्ण पत्रावली के अवलोकन से यह प्रकट होता है कि प्रार्थी ने ऐसा कोई दस्तावेज न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया है जिससे यह साबित होता हो कि प्रार्थी ने किन तिथि, माह व वर्ष में अप्रार्थी के यहॉ कुल कितनी अवधि तक कार्य किया है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम तथा शपथ–पत्र के आधार पर तर्क दिया है कि प्रार्थी का चयन स्थायी विभागीय श्रमिक हेतु नहीं किया जाना गलत है तथा चयन के लिए उपस्थिति की गणना गलत प्रकार से अप्रार्थी निगम के द्वारा द्वार प्रविष्ट पंजिका (Gate Entry Register) के आधार पर की गयी है जिसमें उसकी हाजिरी केवल 69 दिन दर्शायी गयी है, जबकि वास्तविक एवं न्यायसंगत आधार ठेकेदार द्वारा रखा गया हाजिरी रजिस्टर है जिसमें प्रार्थी की हाजिरी चयनित श्रमिकों से बहुत ज्यादा होती है। प्रार्थी ने अपने शपथ–पत्र में यह भी कथन किया है कि अप्रार्थी निगम के प्रबन्धक ने चयन के लिए गेट एन्ट्री रजिस्टर में दर्शायी गयी उपस्थिति को ही आधार मानकर स्टेटमेन्ट तैयार करवाया तथा उसी आधार पर श्रमिकों का चयन कर लिया। शपथ–पत्र में यह भी कथन किया गया है कि समझौता अधिकारी के पास वार्ता में जब दोनों पक्ष उपस्थित हुए तो सेम्पल के तौर पर ठेकेदार का हाजिरी रजिस्टर मई–जून, 90 का रिकार्ड उपस्थिति हेतु प्रबन्धक द्वारा गलत स्टेटमेन्ट तैयार करवाकर गलत चयन किया गया। प्रार्थी ने अपनी जिरह में यह तथ्य स्वीकार किया है कि उसने बाईस गोदाम सवाईमाधोपुर में ठेकेदार और एफ.सी.आई. दोनों के अधीन काम किया था, ठेकेदार का नाम हरकचंद बंसल था। उसकी जिरह में यह भी स्वीकारोक्ति रही है कि बंसल इंटरप्राईजेज और हरकचंद बंसल एक ही थे। उसने जिरह में यह भी कथन किया है कि उसे नहीं मालूम की विभागीयकरण के सम्बन्ध में विभाग व यूनियन के मध्य कोई समझौता हुआ था तथा विभागीयकरण में नम्बर कौनसा था, उसे पता नहीं। उसने कथन किया है कि वह अप्रार्थी के यहॉ फटी–टूटी बोरियां भरने, अनाज में दवाई रखने आदि का काम करता था जो केजुअल लेबर का काम था। इसका यह भी कथन रहा है कि वहॉ पर गेट एन्ट्री होती थी, फिर कहा कि कभी हमारी एन्ट्री होती थी और कभी एन्ट्री नहीं होती थी। इसका यह भी कथन रहा है कि उसे जबानी याद नहीं कि उसने इस दौरान बीच–बीच में कब–काम नहीं किया। इस प्रकार प्रार्थी द्वारा स्टेटमेन्ट आफ क्लेम, प्रस्तुत किये गये शपथ–पत्र तथा उसकी जिरह से भी यह प्रकट नहीं होता है कि प्रार्थी ने कितनी अवधि में किस–किस दिन माह व वर्ष में अप्रार्थी के यहॉ कार्य किया। प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट आफ क्लेम, शपथ–पत्र तथा उसकी जिरह से यह प्रकट होता है कि प्रार्थी, ठेकेदार हरकचंद बंसल के यहॉ कार्य करता था जिसका कि उसके द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम की मद संख्या 1 में भी अंकन है। स्टेटमेन्ट ऑफ क्लेम में प्रार्थी ने यह कथन किया है कि वह वर्ष 1988 से भारतीय खाद्य निगम के सवाईमाधोपुर के ठेकेदार हरकचंद बंसल/बंसल एन्टरप्राईजेज के यहॉ माल चढ़ाने व उताने का काम करता था, जबकि उसने अपनी जिरह में यह स्पष्ट कथन किया है कि वह फटी–टूटी बोरियां भरने, अनाज में दवाई रखने का कार्य करता था। इस प्रकार प्रार्थी, अप्रार्थी के यहॉ क्या कार्य करता था, इस सम्बन्ध में उसकी साक्ष्य में गम्भीर विरोधाभास है।

9. प्रार्थी के स्टेटमेन्ट आफ क्लेम तथा शपथ–पत्र से यह भी प्रकट होता है कि अप्रार्थी का माल उनके गोदाम में ले जाने की व्यवस्था रेल्वे वेगन द्वारा होती थी जिसके लिए सवाईमाधोपुर रेल्वे यार्ड से निगम गोदाम तक रेल्वे लाईन डली हुई है। रेल्वे वेगन को निगम परिसर में लाने व ले जाने के लिए परिसर के पीछे रेल्वे लाईन के ऊपर एक फाटक बना हुआ है जिसे रेल्वे फाटक के नाम से जाना जाता है। उसने स्टेटमेन्ट ऑफ क्लेम में यह भी कथन किया है कि निगम में काम करने के लिए कामगारों को परिचय–पत्र दिये जाते थे, परन्तु प्रार्थी ने न्यायाधिकरण के समक्ष जो परिचय–पत्र प्रस्तुत किया है, उसमें जारी होने की दिनांक की जगह मात्र 90–91 अंकित है, पूर्व का कोई परिचय–पत्र उसके द्वारा प्रस्तुत नहीं किया गया है जिससे यह प्रकट नहीं होता है कि प्रार्थी ने वर्ष 1990 के पूर्व के वर्षो में अप्रार्थी के यहॉ कितने दिन कार्य किया है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम तथा उसके शपथ–पत्र के आधार पर स्वयं यह स्वीकार किया है कि अप्रार्थी के गोदामों में जाने के लिए रेल्वे का एक फाटक बना हुआ है जिस पर प्रवेश करने पर गेट पास बनाया जाता है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह भी कथन किया है कि प्रार्थी की गेट एन्ट्री रजिस्टर के आधार पर गेट एन्ट्री 69 दिन दर्शायी गयी है। इससे यही प्रकट होता है कि अप्रार्थी पक्ष द्वारा गेट एन्ट्री रजिस्टर में आवश्यकतानुसार एन्ट्री की जाती थी तथा प्रार्थी की भी एन्ट्री की गयी है, परन्तु प्रार्थी ने अपनी सम्पूर्ण साक्ष्य में यह तथ्य कहीं नहीं बतलाया है कि उस व्यक्ति का नाम क्या है जिसकी प्रविष्टि रजिस्टर में 254 दिन की उपस्थिति के आधार पर उसका चयन विभागीयकरण हेतु कर लिया गया है। प्रार्थी ने महत्वपूर्ण तथ्य न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया है

जिससे प्रकट होता है कि ऐसे किस व्यक्ति का विभागीयकरण हेतु चयन कर लिया गया जिसकी उपस्थिति प्रार्थी से कम थी। प्रार्थी ने उस ठेकेदार को भी पक्षकार नहीं बनाया है जिसके यहॉ वह वर्ष 1988 से उसके कथनानुसार कार्य करता था। प्रार्थी के कथनानुसार वह हरकचंद बंसल/बंसल एन्टरप्राईजेज के यहॉ कार्य करता था तथा उसकी उपस्थिति उसके अनुसार ठेकेदार द्वारा संधारित रजिस्टर में की जाती थी, परन्तु प्रार्थी ने उस ठेकेदार को पक्षकार नहीं बनाया है, जबकि इस सम्बन्ध में शुरू से ही अप्रार्थी पक्ष ने गम्भीर आपत्ति की है। यदि प्रार्थी किसी ठेकेदार के यहॉ कार्य करता था तो उसे पक्षकार बनाया जाना आवश्यक है तथा प्रकरण के निस्तारण हेतु उसके द्वारा किसी संधारित रजिस्टर को भी न्यायाधिकरण में प्रस्तुत करना आवश्यक हो जाता है। प्रार्थी ने ठेकेदार द्वारा संधारित ऐसे किसी रजिस्टर को ना तो न्यायाधिकरण में प्रस्तुत किया है व ना ही उसकी मूल या सत्यापित प्रति को प्रस्तुत किया है व ना ही ऐसे रजिस्टर को तलब करवाने के लिए किसी प्रकार का कोई प्रार्थना–पत्र ही न्यायाधिकरण में प्रस्तुत किया है, ऐसी स्थिति में प्रार्थी यह तथ्य न्यायाधिकरण के समक्ष साबित करने में असफल रहा है कि किसी ठेकेदार द्वारा उसकी उपस्थिति का संधारण रजिस्टर में किया जाता था जिसमें उसकी उपस्थिति अधिक होती बजाय गेट एन्ट्री रजिस्टर के। अपने द्वारा प्रस्तुत तथ्यों को सिद्ध करने का भार प्रार्थी पर था जिसे मौखिक व दस्तावेजी साक्ष्य से साबित करने का प्रथम दायित्व उसी का था, परन्तु प्रार्थी ऐसा करने में असफल रहा है। प्रार्थी ना तो उस व्यक्ति का नाम न्यायाधिकरण में बता सका है जिसकी 254 उपस्थिति के आधार पर उसका चयन विभागीयकरण के लिए कर लिया गया व ना ही ऐसे ठेकेदार को पक्षकार बनाया गया है जिसके द्वारा उपस्थिति रजिस्टर संधारित किया जाता था, ऐसी स्थिति में अपने द्वारा प्रस्तुत तथ्यों को सिद्ध करने में प्रार्थी पूर्णतया असफल रहा है।

10. **अप्रार्थी ने अपने जवाब स्टेटमेन्ट आफ क्लेम के समर्थन में रामेश्वर प्रसाद कछवाहा पूर्व सहायक प्रबन्धक तथा सीताराम शर्मा पूर्व सहायक प्रबन्धक की साक्ष्य का अवलम्ब लिया है। इन दोनों साक्षियों ने अपने शपथ–पत्र में स्पष्ट रूप से कथन किया है कि सवाईमाधोपुर में विशेष परिस्थितियों के कारण श्रमिकों की वरीयता निश्चित करने के लिए वृहत गोदाम, सवाईमाधोपुर इकाई जहॉ ठेकेदार श्रम पद्धति का निषेध किया गया, के गेट एन्ट्री रजिस्टर को आधार मानकर यूनियन के प्रतिनिधियों की सहभागिता से एवं गोदाम पर लम्बे समय से कार्यरत कर्मचारी जो श्रमिकों की पूरी पहचान रखते थे, की सामूहिक सेवायें लेते हुए श्रमिकों की वरीयता पुनः प्रमाणित करने का कार्य किया गया तथा पूरक अभिलेखों के रूप में जहॉ आवश्यक समझा गया, ठेकेदार द्वारा उपलब्ध करवाये गये अभिलेखों का भी परीक्षण किया गया।** इन साक्षियों ने अपने शपथ–पत्र में यह भी कथन किया है कि निगम प्रबन्धक एवं यूनियन प्रतिनिधियों की संयुक्त देख–रेख में प्रवेश पंजिका के आधार पर वर्ष 88–89, 89–90 व 90–91 के वित्तीय वर्षो की उपस्थिति की गणना कर मासिक, वार्षिक, त्रिवार्षिक उपस्थिति प्रपत्र तैयार किये गये, उनके आधार पर वरीयता सूची तैयार की गयी जो निगम प्रबन्धन के अधिकारियों एवं श्रमिक यूनियन के पदाधिकारियों के संयुक्त हस्ताक्षरों से दिनांक 07/02/92 को जारी की गयी, तदनुसार नियुक्ति–पत्र देने की प्रक्रिया शुरू की गयी जिसके मिनिट की प्रति दिनांक 07/02/92 प्रदर्श एम.8 है। इन साक्षियों ने यह भी कथन किया है कि श्रमिकों के विभागीयकरण की पात्रता सुनिश्चित करने के लिए सवाईमाधोपुर की दोनों भण्डारण इकाईयों पर एक ही ठेकेदार द्वारा कार्य संचालित की संवेदनशीलता के तथ्य को ध्यान में रखकर ही मुख्यालय नई दिल्ली द्वारा जारी परिपत्र दिनांक 11/06/91 प्रदर्श एम.9 में निहित दिशा–निर्देशों का उपयोग करते हुए निगम के अभिलेख के रूप में गेट एन्ट्री रजिस्टर को महत्वपूर्ण दस्तावेज मानते हुए उसकी प्रक्रिया का अनुसरण किया गया, जिसके फलस्वरूप पूर्ववर्ती तथा पश्चातवर्ती 144 श्रमिकों में से केवल 13 ही श्रमिक का परिवर्तन आया जिनकी उपस्थितियां कम पायी गयी। इन साक्षियों के शपथ–पत्र में यह भी अंकन है कि चूँकि उक्त परिस्थितियों में गेट एन्ट्री रजिस्टर ही न्यायसंगत विकल्प था इसलिए इसी को अपनाया गया तथा यही ठेकेदारों द्वारा वृहत गोदाम पर लगाये गये कर्मचारियों की हाजिरी प्रमाणित करने का युक्तियुक्त आधार है।

11. मैंने पत्रावली पर उपलब्ध उन समस्त दस्तावेज का भी अवलोकन किया जो अप्रार्थी द्वारा प्रदर्श एम.6 लगायत एम.12 के रूप में प्रस्तुत किये गये हैं। पत्रावली पर जिला प्रबन्धक, भारतीय खाद्य निगम द्वारा प्रार्थी रामफूल बैरवा द्वारा दस्तावेज तलबी के प्रार्थना–पत्र दिनांक 02/04/96 के अनुसरण में प्रस्तुत दस्तावेजों की सूची है जो कुल 190 श्रमिकों से सम्बन्धित है। प्रदर्श एम.6 अप्रार्थी निगम तथा उसके श्रमिकों के मध्य दिनांक 12/04/91 को हुए समझौता है तथा इसके साथ वह सूची है जिस पर अप्रार्थी के गोदाम में विभागीयकरण किया गया। प्रदर्श एम.7 विभागीयकरण हेतु बफर कॉम्पलेक्स, सवाईमाधोपुर के सम्बन्ध में जारी आदेश है। प्रदर्श एम.8 व एम.9 का हवाला पूर्व में दिया जा चुका है। प्रदर्श एम.10 सहायक श्रम आयुक्त(के) कोटा का असफल वार्ता प्रतिवेदन है। प्रदर्श एम.11 श्रम मंत्रालय, भारत सरकार द्वारा लिखा गया पत्र है जिसके द्वारा यह माना गया कि हरियाणा, मध्यप्रदेश, गुजरात, महाराष्ट्र, राजस्थान व उत्तरप्रदेश के निगम तथा उसकी श्रमिकों के मध्य विवाद अस्तित्व में नही है क्योंकि श्रमिकों की नियुक्ति जरिए ठेकेदार की गयी थी। प्रदर्श एम.12 परिपत्र दिनांकित 13/04/94 है जिसके अनुसार यह माना गया कि श्रमिकों की नियुक्ति अप्रार्थी निगम द्वारा नहीं करने के कारण उनके मध्य एम्पलोई–एम्पलोयर रिलेशनशिप नहीं बनती है। अप्रार्थी पक्ष के साक्षी रामेश्वर प्रसाद ने यह कथन किया है कि सवाईमाधोपुर का बफर कॉम्पलेक्स उसके अन्तर्गत आता था। उसका यह भी कथन रहा है कि हमारे द्वारा मनोनीत अधिकारी ठेकेदार का बिल भेजते समय यह सत्यापित करते थे कि उपरोक्त समय में लगाये गये श्रमिकों का भुगतान मेरे सामने हुआ है और पिछले माह में लगाये गये श्रमिकों का जमा कवाये गये ई.पी.एफ. चालान भी भेजता था। यह भी कथन किया है कि मैंने प्रार्थी के पेमेन्ट की वेज शीट देखी है। उसका यह भी कथन रहा है कि बफर कॉम्पलेक्स सवाईमाधोपुर में 2 गेट हैं, एक गेट श्रमिकों के लिए है और एक वेगन आती है, उसके लिए है। उसने यह सुझाव गलत बताया है कि गेट तीन हों, दो ट्रेक रेल्वे साईडिंग के हैं इसलिए उनको तीन मानने की भूल की जा रही है। एक गेट से दूसरा गेट पौने दो मिलोमीटर दूर है, रेल्वे गेट से कोई एन्ट्री एलाउ नहीं थी। उसने यह सुझाव सही बताया है कि ठेकेदार अलग से श्रमिकों की हाजिरी लगाता था, उस हाजिरी का हमने मेन गेटों की हाजिरी से मिलान किया था। **साक्षी ने यह भी कथन किया है कि वर्ष 88–89, 89–90 व 90–91 की उपस्थिति बनाते समय ये रिकार्ड देखा था। मेरे अधीनस्थ कर्मचारियों से गेट एन्ट्री रजिस्टर और ठेकेदार का रजिस्टर मिलान करवाया था। हमारे सहायक प्रबन्धक प्रत्येक महीने यह गेट एन्ट्री रजिस्टर और ठेकेदार का उपस्थिति रजिस्टर का मिलान करते हैं। यह सुझाव गलत बताया है कि दोनों में उपस्थितियां भिन्न–भिन्न रही हों। प्रदर्श डबल्यू.6 जैसा प्रवेश–पत्र प्रत्येक वर्ष जारी नहीं होता था, जब भी नया ठेकेदार आता था वह अपने श्रमिकों को देता था। यह हमारा परिचय–पत्र नहीं है। अप्रार्थी के दूसरे साक्षी सीताराम शर्मा ने अपनी जिरह में उक्त प्रकार के ही कथन किये हैं तथा यह भी स्वीकार किया है कि हरकचंद बंसल ठेकेदार को हम उसका बिल, ई.पी.एफ. व पेमेन्ट शीट को चैक करके भुगतान करते थे। इसने यह सुझाव गलत बताया है कि गेट एन्ट्री रजिस्टर श्रमिकों की हाजिरी के लिए काम नहीं आता हो बल्कि श्रमिकों की हाजिरी इसी रजिस्टर के आधार पर प्रमाणित होती थी। विभागीकरण के सम्बन्ध में विवाद पैदा ना हो इस कारण यूनियन के सदस्यों को शामिल किया था। साक्षी ने यह सुझाव गलत बताया है कि उनके यहॉ दो–तीन गेट हों। यह भी कथन किया है कि श्रमिकों की गेट एन्ट्री से हाजिरी होती थी लेकिन विभागीयकरण होने के बाद कार्यालय में हाजिरी होती है।** यह सुझाव गलत बताया है कि आसपास के गांव के लोग अपनी सुविधानुसार अन्दर आते हों। यह भी कथन किया है कि ठेकेदार, विभागीयकरण से विवादग्रस्त श्रमिकों तथा अन्य श्रमिकों की हाजिरी अपने हिसाब से लगाता था। विभागीयकरण से पूर्व उक्त श्रमिक ठेकेदार के श्रमिक थे। उन्होंने गेट रजिस्टर, ठेकेदार का पेमेन्ट रजिस्टर देखकर विभागीयकरण हेतु सूची बनायी थी जो डबल एस्योर करते हुए गेट एन्ट्री रजिस्टर को सबसे अहम दस्तावेज माना था, दूसरे रिकार्ड को दूसरा दर्जा दिया था। इस प्रकार अप्रार्थी द्वारा प्रस्तुत साक्ष्य से साबित होता है कि अप्रार्थी निगम के गोदामों में प्रवेश करने के लिए गेट एन्ट्री रजिस्टर को ही प्राथमिकता दी गयी थी क्योंकि यही एक दस्तावेज था जो अप्रार्थी निगम द्वारा सही माना गया। अप्रार्थी पक्ष के साक्षियों की साक्ष्य से यह भी साबित होता है कि ठेकेदार का उपस्थिति रजिस्टर विभागीयकरण हेतु गेट रजिस्टर व ठेकेदार का पेमेन्ट रजिस्टर भी देखा था, परन्तु गेट एन्ट्री रजिस्टर को सबसे अहम दस्तावेज माना गया। गेट एन्ट्री रजिस्टर को महत्वपूर्ण दस्तावेज मानने में अप्रार्थी द्वारा कोई वैधानिक त्रुटि नहीं की गयी है।

12. अप्रार्थी पक्ष के अनुसार निगम के गोदाम में प्रवेश हेतु केवल एक ही मुख्य द्वार था जिसमें गेट एन्ट्री की जाती थी जो श्रमिक की उपस्थिति का सबसे महत्वपूर्ण दस्तावेज प्रमाणीकरण हेतु माना गया। प्रार्थी यह तथ्य साबित करने में असफल रहा है कि अप्रार्थी के बफर गोदाम में उपस्थिति देने के लिए दूसरे गेट से भी प्रवेश कर उपस्थिति दी जा सकती हो व यह तथ्य भी साबित करने में असफल रहा है कि वह अप्रार्थी के गोदाम के दूसरे गेट के पास के गांव में रहता था तथा वहीं से गोदाम में आता—जाता था। जब निगम के गोदाम में उपस्थित होने के लिए एक गेट विशेष बनाया गया है जहॉ पर श्रमिकों की उपस्थिति का इन्द्राज करने का प्रावधान है तो किसी भी श्रमिक को बफर गोदाम में प्रवेश करने हेतु उसी से उपस्थित होना चाहिए तथा उसमें दर्ज प्रविष्टि ही वास्तविक प्रविष्टि/उपस्थिति मानी जायेगी। प्रार्थी अपने द्वारा प्रस्तुत तर्को को साक्ष्य द्वारा साबित करने में असफल रहा है व वह किसी भी प्रकार का अनुतोष न्यायाधिकरण से प्राप्त करने का अधिकारी नहीं है, क्योंकि उसने उस ठेकेदार को न्यायाधिकरण में पक्षकार नहीं बनाया है जिसके कि द्वारा उसे अप्रार्थी पक्ष के गोदाम में कार्य करने हेतु नियोजित किया गया था। उसने अप्रार्थी पक्ष के यहॉ उपस्थिति दर्शाने हेतु किसी भी प्रकार का उपस्थिति रजिस्टर या दस्तावेज पेश नहीं किया है जिससे यह साबित हो कि वह किस—किस अवधि, किस—किस माह में कितने—कितने दिन अप्रार्थी के यहॉ कार्य पर उपस्थित हुआ। वह यह तथ्य भी साबित नहीं कर सका है कि वह अप्रार्थी के यहॉ माल चढ़ाने व उतारने का कार्य करता था या फटी—टूटी बोरियां भरने व अनाज में दवाईयां रखने का कार्य करता था। प्रार्थी द्वारा इस सम्बन्ध में स्टेटमेन्ट आफ क्लेम, शपथ—पत्र तथा उसकी जिरह में गम्भीर विरोधाभाष है। शपथ—पत्र में उसने माल चढ़ाने—उतारने का कार्य ही अंकित किया है, जबकि जिरह में फटी—टूटी बोरियां भरने व अनाज में दवाई रखने का कार्य करना बताया है। प्रार्थी महत्वपूर्ण तथ्यों को भी न्यायाधिकरण के समक्ष प्रस्तुत एवं साबित नहीं कर सका है, उसने ऐसे किसी श्रमिक का नाम नहीं बताया है जिसने उससे कम अवधि में कार्य किया हो तथा विभागीयकरण का उसे लाभ प्राप्त हुआ हो। ऐसे किसी श्रमिक का भी नाम नहीं बताया है जिसने 254 दिन कार्य किया हो तथा उसका विभागीयकरण में चयन कर लिया गया हो। उसके द्वारा वेग कथन न्यायाधिकरण में उल्लेख किये गये हैं जिनकी सत्यता एवं विश्वसनीयता को प्रमाणित करने में वह असफल रहा है। अप्रार्थी द्वारा प्रस्तुत उक्त न्यायदृष्टांत **"एआईआर 1954 मद्रास 1045—मैनेजमेन्ट ऑफ मैसर्स ऑडियन सिनेमा बनाम वर्कर्स ऑफ सागर टॉकिज"** हस्तगत प्रकरण पर लागू होता है। हस्तगत प्रकरण में भी प्रार्थी ठेकेदार द्वारा नियुक्त श्रमिक था तथा वह कभी भी अप्रार्थी पक्ष द्वारा नियुक्त नहीं किया गया था इसलिए औद्योगिक विवाद अधिनियम की धारा 2(k) के अनुसार प्रार्थी तथा अप्रार्थी के मध्य किसी भी प्रकार से नियोजक व नियोक्ता के सम्बन्ध नहीं थे तथा प्रार्थी को धारा 10 के अनुसार विवाद उठाने का अधिकार नहीं है।

13. अतः प्रकरण के समस्त तथ्यों, परिस्थितियों, प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम, मौखिक व दस्तावेजी साक्ष्य तथा अप्रार्थी द्वारा प्रस्तुत जवाब स्टेटमेन्ट आफ क्लेम, साक्ष्य तथा दस्तावेज से प्रार्थी यह साबित करने में असफल रहा है कि उससे कम अवधि में कार्य करने वाले व्यक्ति को विभागीयकरण के परिणामस्वरूप चयन कर लिया गया हो तथा प्रार्थी का चयन नहीं किया गया हो। फलतः प्रार्थी श्रमिक, अप्रार्थी से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी घोषित होने योग्य नहीं है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 24/06/93 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक हनुमान प्रसाद बैरवा प्रकरण के समस्त तथ्यों, परिस्थितियों, प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम, मौखिक व दस्तावेजी साक्ष्य तथा अप्रार्थी द्वारा प्रस्तुत जवाब स्टेटमेन्ट आफ क्लेम, साक्ष्य तथा दस्तावेज से यह साबित करने में असफल रहा है कि उससे कम अवधि में कार्य करने वाले व्यक्ति को विभागीयकरण के परिणामस्वरूप चयन कर लिया गया हो तथा प्रार्थी का चयन नहीं किया गया हो। फलतः प्रार्थी श्रमिक, अप्रार्थी से किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी घोषित होने योग्य नहीं है।

अधिनिर्णय आज दिनांक 22/11/2018 को खुले न्यायाधिकरण में सुनाया जाकर हस्ताक्षरित किया गया जिसे नियमानुसार समुचित सरकार को प्रकाशनार्थ भिजवाया जावे।

विक्रान्त गुप्ता, न्यायाधीश

नई दिल्ली, 29 जनवरी, 2019

का. आ. 207.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 2/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of

M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 21.01.2019.

[No. Z-16025/4/2019-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of November, 2018

INDUSTRIAL DISPUTE L.C. No.2/2014

Between:

Smt. Pittala Suvarna,
W/o Pittala Rama Murthy,
R/o H.No. 10-3-63/1,
Sri Ramanajaneya Colony,
Kothagudem Post, Khammam District -507101 … Petitioner

AND

1. The Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Hanamkonda – 506001

2. The Branch Manager,
Life Insurance Corporation of India,
Kothagudem Branch, Ganesh Puram,
Writer Busty, Kothagudem Post-507101 …Respondents

Appearances:

For the Petitioner : Sri T. Koteswara Rao, Advocate

For the Respondent : Sri K.R.L. Sarma, Advocate

AWARD

Smt. Pittala Suvarna who worked as Peon/Casual Labourer (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents Life Insurance Corporation of India with a prayer to pass an order setting aside the termination order issued orally by the Respondents as it is illegal, bad in law and violative of Article 14 and 21 of the Constitution of India and Section 25 N of the Industrial Disputes Act, 1947 and also judgement of the Hon'ble Apex Court decided in the case of Life Insurance Corporation of India and another etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005 and consequently directing the Respondent corporation to reengage the Petitioner in service with all consequential benefits including back wages in the interest of justice.

2. **The case of the Petitioner as averred in claim petition in brief as follows:**

The Petitioner was initially engaged as a Casual Labourer (Sweeper) in the office of the 2nd Respondent with effect from 17.4.2006 and continued in the same capacity upto 23.1.2013. It is stated that the Hon'ble Supreme Court of India in the case of Life Insurance Corporation of India and etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005 has directed the Respondent corporation to absorb casual labourers employed under them as per the scheme submitted before the Hon'ble Court. According to which "One time limited examination for those temporary persons who are working in Life Insurance Corporation of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the time of entry into LIC of India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance. The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective Zone." It is also submitted that the Petitioner was working as a casual labourer for a long time without any blemish. The Respondent Corporation is an Industry covered under the Industrial Disputes Act, 1947. Since more than 100 workers/employees were working under the Respondent corporation, the provisions of retrenchment under Sec.25N of the Chapter V-B of Industrial Disputes Act, 1947 are applicable in the instant case of termination. The Respondent corporation has not followed the same mandatory procedure contained under the Industrial Disputes Act, 1947 while terminating the service of the Petitioner. It is also submitted that being aggrieved by the oral termination order of the Respondent corporation the Petitioner approached the conciliation officer i.e., Assistant Labour Commissioner (C) for redressal of her grievance. The said conciliation officer has initiated one conciliation proceedings on 12.6.2013 and completed on 26.7.2013 as no settlement was arrived in the proceedings and lastly submitted his report. Therefore, i) the Petitioner was constrained to file this petition challenging the termination of the Petitioner by the Respondents which is in violation of Sec.25N of the provisions of the Industrial Disputes Act, 1947 as well as Articles 14 and 21 of the

Constitution of India. ii) the termination of the services of the Petitioner by the Respondent is in violation of the judegment of the Hon'ble Apex Court as referred above. iii) the job which the Petitioner was performing in the Respondent corporation is of perennial in nature and the post is still lying vacant. The termination of services of the Petitioner without following mandatory procedure is a colourable Act coupled with the malafide intention. iv) the Petitioner is not able to procure any employment/work in other organizations till date, thus, he is entitled of immediate regularization and with the above averments the Petitioner has filed this case claiming the relief mentioned above.

3. **The Respondents filed counter challenging the claim of the Petitioner on the ground of its maintainability which runs as follows**:

It is stated that pursuant to the order of the Hon'ble Supreme Court of India dated 18.1.2011 passed in C.A. No.953-968 of 2005, the LIC of India issued an employment notice dated 20.5.2011 calling for applications for recruitment of peons from the eligible persons, which are quoted below:

a) All temporary persons working in LIC of India for more than 5 years as on 18.1.2011.

b) Possessing minimum eligible qualification and age as prescribed by the LIC of India at the time of their entering into LIC of India

c) Candidates have to submit the copies of proof of working with the Corporation for more than 5 years as on 18.1.2011 duly signed by the Chief/Sr/Branch Manager of the Branch Office, Manager (P & IR)/Manager (OS) of the respective Divisional Office.

d) The onus of furnishing the authentic documentary proof for the above at the time of submission of the application shall be on the candidate.

It is submitted that in compliance to the orders of the Hon'ble Supreme Court of India, the Respondent corporation released one notification calling for the applications from the eligible candidates at various Divisional offices on or before 3.6.2011 which was the cut-off date. All the applications received under Hyderabad Division were forwarded to the Zonal Office, Hyderabad and after verification, written test was conducted on 26.6.2011 by the Zonal Office for all such eligible candidates who were eligible to the post as per the norms/eligibility criteria fixe by the Hon'ble Supreme Court of India. It is further submitted that the Respondent corporation had taken persons as daily wagers whenever need arose and situation demanded. The Petitioner was purely taken as a part time Sweeper, under the category of sweeper intermittently. The Petitioner has not completed one year of service continuously. As per the records maintained by the corporation she never worked continuously from 17.4.2006 to 23.1.2013 as contended by the Petitioner. The burden of proof lies on the Petitioner only with regard to compliance of the eligibility criteria as decided by the Hon'ble Apex Court and her continuous service as contended by her in her petition. In fact the Petitioner had been taken as daily wager on his request by the Respondent corporation i.e., in the office of Respondent No.2 as and when work arose. The Petitioner has not fulfilled the guidelines of the Apex Court as per the notification dated 20.5.2011 given by the LIC for submitting the application as a daily wager before the date fixed by the LIC. Therefore, the Petitioner is not eligible as per the LIC notification. The Petitioner is not even eligible for retrenchment compensation as provided under Sec. 25N of the Industrial Disputes Act, 1947 as she had not completed one year of service continuously. She had been taken as a daily wager under the category of daily wager intermittently. Therefore, compliance of Sec.25N of the Industrial Disputes Act, 1947 does not arise. The Respondent corporation has never issued any appointment letter to the Petitioner as she was neither appointed under the LIC (Employment and Temporary Staff) Instructions, 1993 dated 28.6.1993 nor under any other instructions issued by the corporation from time to time. Therefore, the termination of service of the Petitioner does not arise at all. Her services were not taken further in strict compliance of the order of the Hon'ble Apex Court in Civil Appeal Nos.953-968 of 2005. The claim of the Petitioner that he was engaged as a daily wager in the office of the 2nd Respondent with effect from 17.4.2006is not correct. As per the records of the Respondents the Petitioner never worked continuously from 17.4.2006 to 21.3.2011. The vouchers submitted by the Petitioner clearly shows that those are the payment vouchers relating to daily wagers for the service taken by the corporation. Therefore, the plea of the Petitioner that he worked continuously as daily wager/casual labour is not correct. It is further submitted that as the Petitioner was not engaged by the corporation, the question of her termination does not arise. So also the question of violation of any provisions either under the Industrial Disputes Act, 1947 or under the Constitution of India does not arise. It is further submitted that the contention of the Petitioner that still the posts are lying vacant is not correct. It is also submitted that the corporation has not employed any workman on temporary basis for the past seven years. But the corporation is engaging the persons purely on daily wage basis only depending upon the requirement of the office. The daily wagers were paid according to the applicable Laws in force. Therefore, the office has never exploited the workman at any point of time. The Respondents have also submitted that the LIC of India was not indulging unfair labour practice. As it is need based category they have engaged the Petitioner as daily wager as and when the situation demanded and the corporation paid the due wages as applicable. It is further submitted that the Hon'ble Supreme Court of India vide its order dated 18.1.2011 has stated that such of those temporary employees who do not apply and are or not successful shall cease to be in the employment. Those temporary persons, who were not governed by the order of the Hon'ble Apex Court shall cease to be in the employment. Therefore, as the Petitioner was not taken further and the question of reengaging her by the Respondent corporation does not arise and it will be contrary to the guidelines fixed by the Hon'ble Apex Court. It is stated that not engaging the services of a daily wager is in obedience of the above order of the Hon'ble Supreme Court of India. As per the employment notification dated 20.5.2011 the candidates who do not satisfy the eligibility conditions are liable to be disqualified at any stage of the selection which has been strictly followed by the Respondent management. As the recruitment process was over and the Petitioner did not satisfy the eligibility criteria, the Petitioner was not entitled to be

taken in service. With the above averments, the Respondents submitted for dismissal of the claim petition filed by the Petitioner as devoid of merit and is to be rejected.

4. As per the averments of both the sides, the following points are to be determined:

I. Whether the termination order orally issued by the Respondents is illegal and bad in Law and in violation of Article 14 and 21 of the Constitution of India and provisions of Sec.25 N of the Industrial Disputes Act, 1947.

II. Whether the Petitioner is eligible to get employment under the Respondents' management in obedience of the direction of the judgement of the Hon'ble Supreme Court of India passed n the case of Life Insurance Corporation of India and another etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005?

III. Whether the Respondents have violated the provisions under Sec.25 N of the Industrial Disputes Act, 1947?

IV. Whether the Petitioner is entitled to get employment under the Respondents and also eligible to get all the consequential benefits including back wages and

V) To what relief the Petitioner is entitled to get?

5. During the course of hearing of this case, the Petitioner has been examined herself as WW1 and has also relied on six documents relied by her in support of her claim which have been marked as Ex.W1 to W6. On the other hand, the Respondents have examined Sri K. Somasekhar Rao, the Sr. Manager, E & OS Department of the Respondent management as MW1 and relied on two documents which have been marked as Ex.M1 and M2.

6. I have already heard the Learned Counsel for both the sides in the matter.

7. During the course of argument, the Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner was working in the office of the 2nd Respondent i.e., Life Insurance Corporation of India, Kothagudem with effect from 17.4.2006 and continued in the same capacity upto 23.1.2013 as a daily wager. She has filed the work particulars like the attendance register details, and the wage vouchers. The contention of the Respondents that the Petitioner was purely taken as a daily wager under daily wage basis on 17.4.2006 and as and when need arose and situation demanded the Respondents corporation paid daily wages as applicable which clearly indicates that the Petitioner worked intermittently as claimed by them. The Petitioner in her chief evidence affidavit has stated that she was engaged in the Respondents' corporation from 17.4.2006 to 23.1.2013. The management witness MW1 in his cross examination has admitted that they have engaged the Petitioner from 2010 to 31.1.2013 and the Petitioner worked continuously till the date of her termination with effect from 1.2.2013. MW1 also admitted that the document relied on by the Petitioner indicates that the Petitioner has worked 240 days from 1.4.2012 to 31.1.2013. He contended that the Petitioner has worked continuously for more than 240 days in a period of 12 months prior to the date of termination of her service i.e., 31.1.2013. He contended that the termination of the workman by oral instructions which amounts to illegal retrenchment as mandate procedure has not been followed as per Sec.25N of the Industrial Disputes Act, 1947. He also contended that as the Petitioner was working in the Respondents' corporation from the year 2010 to 31.1.2013 continuously and has passed the test of continuous service of 240 days in the precedent 12 months. She is entitled to get the benefit. The Petitioner in her evidence affidavit as well as in her claim statement has clearly stated that she was not employed elsewhere till date and has prayed for full back wages. The Respondents have not made any attempt to disprove her claim inspite of the fact, that the onus to that effect lies on them as held by the Hon'ble Apex Court form time to time. He also contended that the Petitioner was under the employment of the Respondents' management from the year 2010 to 31.1.2013. Hence, the termination of service of the Petitioner orally with effect from 1.2.2013 is illegal and violative of Sec.25 N of the Industrial Disputes Act, 1947. Thus, the Respondents may be directed to reinstate the Petitioner in service with consequential benefits like full back wages from the date of her termination with effect from 1.2.2013 to the date of reinstatement, with 18% of interest. He also contended to pass award by setting aside the termination order issued orally to the Petitioner with effect from 1.2.2013 and direct the Respondents management to reinstate the Petitioner into service together with consequential benefits with full back wages.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents contended that the claim petition filed by the Petitioner is not maintainable. He contended that in obedience to the direction of the Hon'ble Supreme Court of India passed in Civil Appeal Nos. 953-968 of 2005, the Respondents issued employment notice on 20.5.2011 mentioning the eligibility criteria inviting applications from the eligible candidates to absorb the daily wagers. He also contended that broadly the eligibility criteria are as under which is quoted below for ready reference:

a) All temporary persons working in LIC of India for more than 5 years as on 18.1.2011.

b) Possessing minimum eligible qualification and age as prescribed by the LIC of India at the time of their entering in to LIC of India.

c) Candidates have to submit the copies of proof of working with the Corporation for more than 5 years as on 18.1.2011 duly signed by the Chief/Sr/Branch Manager of the Branch Office, Manager (P & IR) /Manager (OS) of the respective Divisional Office.

d) The onus of furnishing the authentic documentary proof for the above at the time of submission of the application shall be on the candidate.

He contended that those who have not fulfilled the above eligibility criteria, their applications have not been considered. The Petitioner has not fulfilled the above criteria for which her application was rejected. The Petitioner has admittedly worked in the Life Insurance Corporation of India but she was continued upto 31.1.2013. The Petitioner has not complied with the above criteria for which, her case was not considered. He further contended that the Respondents corporation had taken persons on daily wages whenever need arose and situation demanded. The Petitioner herein was purely taken as a daily wager under the category of daily wage basis from 2010 onwards that too intermittently. When ever the need arose and situation demanded, the Respondent corporation paid daily wages to the workers as applicable. Therefore, the question of joining date as claimed by the Petitioner as 17.4.2006 is not correct. The Petitioner has not been engaged by the Respondents' management on 17.4.2006, and her services were purely on daily wage basis. As the Petitioner has not fulfilled the minimum criteria i.e., completion of five years of service as on the cutoff date, her case was not considered. The Petitioner was not eligible for the written test as per the guidelines of the Apex Court. The burden of proof lies on the Petitioner only with regard to compliance of the eligibility criteria as decided by the Hon'ble Apex Court, and her continuous service as contended by her in her petition. The Petitioner was taken into service as a daily wager at her request the Respondents' corporation as and when work arose. Since the Petitioner has not fulfilled the required criteria in obedience to the employment notice, her application was not considered. Since the Petitioner has not worked 240 days continuously in a year, she is not entitled for retrenchment compensation as provided under Sec.25N of the Industrial Disputes Act, 1947. She was only taken as a daily wager under the category of "daily wager" intermittently. Hence, compliance of Sec.25N of the Disciplinary Authority does not arise. The Petitioner was never appointed under the management of Life Insurance Corporation of India (Employment Of Temporary Staff) Instructions, 1993 dated 28.6.1993 nor under any other instructions issued by the Corporation from time to time. Therefore, the termination of the services of the Petitioner does not arise. The service of the Petitioner was not taken further by the Respondents' at any point of time. The Petitioner has never worked in the office of the 2nd Respondent with effect from 17.4.2006 to 31.1.2013 continuously. The Petitioner has made up a false story in order to get employment. The contention of the Petitioner that there is vacancy in the office of the Respondents' corporation is totally false. Since the Petitioner has worked on temporary basis, the question of her regularization does not arise. Since the Petitioner had been engaged on daily wage basis and has not worked 240 days continuously in a year, he is not entitled to get retrenchment compensation and he is not also entitled for regularization. He further contended that pursuant to the employment notice, the Petitioner has not fulfilled the eligibility criteria that is why her case was not considered. She has not worked continuously for a period of five years before issuance of the employment notice in compliance to the order of the Apex Court. Therefore, the Petitioner is not eligible to get any employment. Lastly, he contended that though the Petitioner has relied on her working particulars like, copies of wage register, wage slips, statement of account of Andhra Bank. Those documents clearly go to show that she has worked from December, 2010 to January, 2013 and the payment of wages also shows that she has not been paid for the entire month. Those work particulars of the Petitioner is sufficient to show that the Petitioner has not completed 240 days in a year. Therefore, basing on the documents relied on by the Petitioner it is sufficient to hold that the Petitioner is not entitled to get compensation benefit and the Respondents have not violated any of the provision as required under Sec.25N of the Industrial Disputes Act, 1947. The Petitioner has not relied on any document to show that she has complied the requirement of the employment notice issued by the Respondent corporation, pursuant to the direction of the Hon'ble Apex Court passed in Civil Appeal Nos. 953-968 of 2005. Mere admission of MW1 that the Petitioner has worked 240 days in a year is not sufficient to prove her case in absence of any cogent evidence. When the Petitioner was working as a sweeper on daily wages basis she has to prove how she worked more than 240 days in a year and what was her working hour per day in the office of the Respondents' management.

9. **Point No.I**: On consideration of the rival contentions of both the sides, it is seen that the Learned Counsel appearing for the Petitioner has already contended that the Petitioner was working in the Respondents' organization from the year 2006 to 2013 and she has completed five years of service. He has also contended that again the Petitioner worked under the Respondents from 1.4.2011 to 31.1.2013 and for the above periods she has got difference of minimum wages, as per the order of the Regional Labour Commissioner(C). But WW1 in her cross examination has clearly admitted that the Petitioner has not filed any document to show that she has worked under the Respondents from a year from 2006 to 2013 and she has received the difference of wages from 1.4.2011 to 31.1.2013. Admittedly, except, the work particulars of the Petitioner i.e., the vouchers from the month of April, 2006 to 31.3.2007 and copy of the wage register for the month of December, 2010 to January, 2013, no other documents have been relied on by the workman towards receipt of salary from the Respondents' management. Those work particulars of the Petitioner clearly shows that the Petitioner has only worked from the month of May, 2010 to January, 2013, except the month of July, 2011, maximum for a period of two years and seven months intermittently as a casual labourer. No other documents have been filed from the side of the workman to show that she was working continuously under the Respondents. The Learned Counsel for the Petitioner further admitted that the Petitioner has not received either any appointment letter or any termination letter as because her appointment is oral and termination is also oral. When no documents are relied on from the side of the workman and no averment is made in her claim statement regarding her working period from 2006-2013 under the Respondents management, it can not be stated that the workman has completed five years of service under the Respondents' management. The Workman has relied on the judgement of the Hon'ble Apex Court decided in Civil Appeal No.953-968 of 2005 along with the certificate of conciliation issued by the conciliation officer. The Respondents have also not disputed the judgement of the Hon'ble apex Court passed in Civil Appeal No.953-968 of 2005. But the Respondents stated that pursuant to the judgement of the Apex Court, the Respondents issued employment

notice to the casual workers who were coming under the eligibility criteria to be engaged permanently in the Respondents' organization. The workman has nowhere stated that she has fulfilled the eligibility criteria to be appointed under the Respondents' management. The workman has also not filed any document to show that how she has complied the eligibility criteria to be regularized as a labourer under the Respondents' organization. Nor she has filed any document to show under which manner her application was not considered and accepted. The Learned Counsel for the workman has further contended that when MW1 in his cross examination has admitted that the Petitioner was working at Kothagudem as a daily wager intermittently, there is no need of having any such document to that effect. On the other hand, the Learned Counsel for the Respondents' submitted that at Kothagudem office whenever there was need, they used to engage daily labourers in their office, but not continuously. The Respondents in their counter has admitted that the workman was working as a daily wager intermittently as because she was working as a daily labourer as and when required, that does not mean that she was working continuously under the Respondents. He also admitted that the documents relied on by the workman/Petitioner clearly shows that from December, 2010 till January, 2013 she worked there and she has submitted the documents to that effect. If the workman has worked from the year 2010 to 31.1.2013 continuously, what prevented her to file any other documents for that period i.e., from 2010 onwards. As because MW1 admitted that the workman was working from the year 2010 to 31.1.2013 continuously till the date of her termination, without any documentary evidence it cannot be stated that the workman has completed 240 days of work continuously in a year, and her work was perennial in nature. Unless and until, the Petitioner workman would prove that she has worked continuously for a period of 240 days in a year, and her work was perennial in nature it cannot be stated that the workman is illegally terminated from service. It is the case of the Petitioner workman that she joined in the Respondent organization orally and her termination was oral, but it is not known the actual date of her joining and actual date of her termination. In absence of any such cogent evidence it cannot be stated that the workman has worked continuously under the Respondents' organization for a period of 240 days in a year and her work was perennial in nature and her termination is illegal, when the Respondents have categorically stated that they have engaged the services of the workman intermittently as and when required. In fact no satisfactory evidence is available before this Tribunal to consider that the termination order issued by the Respondents orally is illegal, and bad in Law and in violation of Article 14 and 21 of the Constitution of India and the provisions of Sec.25 N of the Industrial Disputes Act, 1947.

Thus, Point No. I is answered accordingly.

11. **Point No. II**: The Petitioner has contended that she has completed five years of service under the Respondents' management and she is eligible to get the employment under the Respondents' management pursuant to the judgement of the Hon'ble Supreme Court of India passed in the case of Life Insurance Corporation of India and another etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005. Admittedly, the Petitioner has nowhere stated that when she applied for the post and when her application was rejected. The Respondents have fairly stated that pursuant to the above stated judgement, they had issued employment notice with the required criteria, but as the Petitioner failed to comply the required criteria, her case was not considered. The Petitioner has not stated in which way she had complied the employment notice issued by the Respondents' organization, and in which manner her application was rejected. When no document was produced from the side of the Petitioner/workman to show that whether she has complied the eligibility criteria mentioned in the employment notice pursuant to the judgement of the Hon'ble Apex Court, passed in Civil Appeal Nos. 953-968 of 2005, it cannot be stated that the Petitioner is eligible to get an employment under the Respondents' organization, in view of the above said order of the Hon'ble Supreme Court.

Thus, Point No.II is answered accordingly.

12. **Point Nos. III to V:**. All these three points are taken up together for convenient discussion as their answer give rise to the same facts and logic involved for final discussion. In view of the observations made in Point No.I, it has already been held that the Petitioner/workman has not worked continuously for a period of 240 days in a year under the Respondents' management and her work was perennial in nature. Therefore, the Respondents have not issued any notice as provided under Sec.25N of the Industrial Disputes Act, 1947. In fact, as the Petitioner has worked intermittently as a daily wage labourer under the Respondents' organization she is not entitled to get any compensation under Sec.25N of the Industrial Disputes Act, 1947 and the Respondents have not violated any such provisions and in the circumstances stated above, the Petitioner workman is not entitled to get any other relief.

Thus, Point Nos.III to V are answered accordingly.

ORDER

In view of the fore gone discussion, the petition is dismissed. Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant corrected by me on this the 29th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. Pittala Suvarna	MW1: Sri K. Somasekhar Rao

Documents marked for the Petitioner

Ex.W1: Photostat copy of work particulars of the Petitioner

Ex.W2: Photostat copy of judgement of Hon'ble Apex Court in Civil Appeal No.953-968 of 2005

Ex.W3: Photostat copy of affidavit filed in WP No.9883/2016

Ex.W4: Photostat copy of interim orders in WP No.9883/2016

Ex.W5: Photostat copy of orders in WA No.692 of 2016

Ex.W6: Photostat copy of orders by RLC(C) under MW Act in application No.46/61/2013-EEL

Documents marked for the Respondent

Ex.M1: Photostat copy of the order of Hon'ble Supreme Court of India dt.18.1.2011 in CA Nos.953-968/2005

Ex.M2: Photostat copy of the employment notice issued by the Respondents organization dt.20.5.2011 calling for application for recruitment of Peons from the eligible persons.

नई दिल्ली, 29 जनवरी, 2019

का. आ. 208.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 38/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-29012/1/2013-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2013) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Ltd. and their workman, which was received by the Central Government on 21.01.2019.

[No. L-29012/1/2013-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 27th day of December, 2013

INDUSTRIAL DISPUTE No. 38/2013

Between:

Sri D. Deva Sahayam,
S/o D. Ramaswamy,
D.No.40-2-396, Shantinagar,
Kailasapuram Road, Visakhapatnam (AP). …Petitioner Union

AND

The Manager (P&A),
Steel Authority of India Ltd.,
Central marketing Organization, Transport &
Shipping Office, Southern Region, Harbour
Approach Road, Visakhapatnam. … Respondent

Appearances:

For the Petitioner : Sri A.Santosh Kumar, Advocate

For the Respondent : M/s. C.R. Sridharan, G. Narender Reddy, S. Ramesh, M. Srinivas Reddy, P.V. Durga Prasad, G.V.S. Ganesh & M. Sreehari, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/1/2013-IR(M) dated 6.3.2013 referred the following dispute between the management of SAIL, Central marketing Organization, Transport & Shipping Office, Visakhapatnam and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the management of Steel Authority of India, Central marketing Organization, Transport & Shipping Office, Southern Regional, Visakhapatnam in terminating the services of Shri D. Deva Sahayam, Ex-Water Boy (Daily Wage Worker), is legal and justified? What relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 38/2013 and notices were issued to the parties concerned.

2. The Petitioner workman has filed his claim statement and Respondent also filed their respective counter statement.

3. The case stands posted for recording of Petitioner's evidence.

4. The Respondent management filed IA No.35/2016 to reject the present ID regarding maintainability of the dispute, as the same is being barred by the principles of ***res judicata***. Petitioner has filed counter to the IA No.35/2016. After hearing both the sides, the IA was allowed.

5. In view of the order passed in IA 35/2016, the present ID No.38/2013 becomes frivolous and is liable to be dismissed. In the circumstances stated above, 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 27th day of December, 2018.

MURALIDHAR PRADHAN , Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 जनवरी, 2019

का. आ. 209.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 6/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of
M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 21.01.2019.

[No. Z-16025/4/2019-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of November, 2018

INDUSTRIAL DISPUTE L.C.No. 6/2014

Between:

Sri K. Satyaprakash,
S/o K. Butchirajam,
H.No.23-244, Indira Nagar,
Yellandu Post,
Khammam District – 507213. … Petitioner

AND

1. The Divisional Manager,
Life Insurance Corporation of India,
Divisional Office,
Hanamkonda – 506001.

2. The Branch Manager,
Life Insurance Corporation of India,
S.O., Yellandu, Yellandu Post,
Khammam District. … Respondents

Appearances:

For the Petitioner : Sri T. Koteswara Rao, Advocate

For the Respondent : Sri K.R.L. Sarma, Advocate

AWARD

Sri K. Satyaprakash who worked as Peon/Casual Labourer (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents Life Insurance Corporation of India with a prayer to pass an order setting aside the termination order issued orally by the Respondents as it is illegal, bad in law and violative of Article 14 and 21 of the Constitution of India and Section 25 N of the Industrial Disputes Act, 1947 and also judgement of the Hon'ble Apex Court decided in the case of Life Insurance Corporation of India and another etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005 and consequently directing the

Respondents' corporation to reengage the Petitioner in service with all consequential benefits including back wages in the interest of justice.

2. **The case of the Petitioner as averred in claim petition in brief as follows:**

The Petitioner was initially engaged as a Peon/Casual Labourer in the office of the 2nd Respondents with effect from 12.1.2008 and continued in the same capacity upto 23.1.2013. It is stated that the Hon'ble Supreme Court of India in the case of Life Insurance Corporation of India and etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005 has directed the Respondents' corporation to absorb casual labourers employed under them as per the scheme submitted before the Hon'ble Court. According to which "One time limited examination for those temporary persons who are working in Life Insurance Corporation of India for more than five years and who had possessed minimum eligible qualification and age as prescribed at the time of entry into LIC of India would be considered. For this purpose, LIC of India will hold a limited written examination which will be in the vernacular language with a limited syllabus which will be announced in advance. The successful short listed candidates shall be called for the interview. Such of those persons who are successful in the interview shall be initially appointed and posted anywhere in the respective Zone." It is also submitted that the Petitioner was working as a casual labourer for a long time without any blemish. The Respondents' Corporation is an Industry covered under the Industrial Disputes Act, 1947. Since more than 100 workers/employees were working under the Respondents' corporation, the provisions of retrenchment under Sec.25N of the Chapter V-B of Industrial Disputes Act, 1947 are applicable in the instant case of termination. The Respondents' corporation has not followed the same mandatory procedure contained under the Industrial Disputes Act, 1947 while terminating the service of the Petitioner. It is also submitted that being aggrieved by the oral termination order of the Respondents' corporation the Petitioner approached the conciliation officer i.e., Assistant Labour Commissioner (C) for redressal of his grievance. The said conciliation officer has initiated one conciliation proceedings on 12.6.2013 and completed on 26.7.2013 as no settlement was arrived in the proceedings and lastly submitted his report. Therefore, i) the Petitioner was constrained to file this petition challenging the termination of the Petitioner by the Respondents which is in violation of Sec.25N of the provisions of the Industrial Disputes Act, 1947 as well as Articles 14 and 21 of the Constitution of India. ii) the termination of the services of the Petitioner by the Respondents is in violation of the judegment of the Hon'ble Apex Court as referred above. (ii) the job which the Petitioner was performing in the Respondents' corporation is of perennial in nature and the post is still lying vacant. The termination of services of the Petitioner without following mandatory procedure is a colourable Act coupled with the malafide intention. iv) the Petitioner is not able to procure any employment/work in other organizations till date, thus, he is entitled of immediate regularization and with the above averments the Petitioner has filed this case claiming the relief mentioned above.

3. **The Respondents filed counter challenging the claim of the Petitioner on the ground of its maintainability which runs as follows**:

It is stated that pursuant to the order of the Hon'ble Supreme Court of India dated 18.1.2011 passed in C.A. No.953-968 of 2005, the LIC of India issued an employment notice dated 20.5.2011 calling for applications for recruitment of peons from the eligible persons, which are quoted below:

a) All temporary persons working in LIC of India for more than 5 years as on 18.1.2011.

b) Possessing minimum eligible qualification and age as prescribed by the LIC of India at the time of their entering into LIC of India

c) Candidates have to submit the copies of proof of working with the Corporation for more than 5 years as on 18.1.2011 duly signed by the Chief/Sr/Branch Manager of the Branch Office, Manager (P & IR)/Manager (OS) of the respective Divisional Office.

d) The onus of furnishing the authentic documentary proof for the above at the time of submission of the application shall be on the candidate.

It is submitted that in compliance to the orders of the Hon'ble Supreme Court of India, the Respondents' corporation released one notification calling for applications from the eligible candidates at various Divisional offices on or before 3.6.2011 which was the cut-off date. All the applications received under Hyderabad Division were forwarded to the Zonal Office, Hyderabad and after verification, written test was conducted on 26.6.2011 by the Zonal Office for all such eligible candidates who were eligible to the post as per the norms/eligibility criteria fixed by the Hon'ble Supreme Court of India. It is further submitted that the Respondents' corporation had taken persons as daily wagers whenever need arose and situation demanded. The Petitioner was purely taken as a daily wager, under the category of daily wage basis from July, 2010 onwards, that too intermittently. In fact, the Yellandu SO was inaugurated on 17.1.2008 and thereafter whenever need arose and situation demanded the Respondents' corporation paid daily wages as applicable. Hence, the question of joining date as 12.2.2008 is not correct. The Petitioner has not worked for five years and has not fulfilled his minimum service of five years as on the cut off date. The Petitioner was not even eligible for the written test as per the guidelines of the Apex Court. The burden of proof lies on the Petitioner only with regard to compliance of the eligibility criteria as decided by the Hon'ble Apex Court and his continuous service as contended by him in his petition. In fact the Petitioner had been taken as daily wager on his request by the Respondents' corporation i.e., in the office of RespondentsNo.2 as and when work arose. The Petitioner has not fulfilled the guidelines of the Apex Court as per the notification dated 20.5.2011 given by the LIC for submitting the application as a daily wager before the date fixed by the LIC. Therefore, the Petitioner is not eligible as per the LIC notification. The Petitioner is not even eligible for retrenchment compensation as provided under Sec. 25N of the Industrial Disputes Act, 1947 as he had not completed one year of service continuously. He had been taken as a daily wager under the category of daily wager intermittently.

Therefore, compliance of Sec.25N of the Industrial Disputes Act, 1947 does not arise. The Respondents' corporation has never issued any appointment letter to the Petitioner as he was neither appointed under the LIC (Employment and Temporary Staff) Instructions, 1993 dated 28.6.1993 nor under any other instructions issued by the corporation from time to time. Therefore, the termination of service of the Petitioner does not arise at all. His services were not taken further in strict compliance of the order of the Hon'ble Apex Court in Civil Appeal Nos.953-968 of 2005. The claim of the Petitioner that he was engaged as a daily wager in the office of the 2nd Respondent with effect from 12.1.2008 is not correct. As per the records of the Respondents the Petitioner never worked continuously from 12.1.2008 to 21.3.2011. The vouchers submitted by the Petitioner clearly shows that those are the payment vouchers relating to daily wagers for the service taken by the corporation. Therefore, the plea of the Petitioner that he worked continuously as daily wager/casual labour is not correct. It is further submitted that as the Petitioner was not engaged by the corporation, the question of his termination does not arise. So also the question of violation of any provisions either under the Industrial Disputes Act, 1947 or under the Constitution of India does not arise. It is further submitted that the contention of the Petitioner that still the posts are lying vacant is not correct. It is also submitted that the corporation has not employed any workman on temporary basis for the past seven years. But the corporation is engaging the persons purely on daily wage basis only depending upon the requirement of the office. The daily wagers were paid according to the applicable Laws in force. Therefore, the office has never exploited the workman at any point of time. The Respondents have also submitted that the LIC of India was not indulging unfair labour practice. As it is need based category we have engaged the Petitioner as daily wager as and when the situation demands and the corporation paid the due wages as applicable. It is further submitted that the Hon'ble Apex Court vide its order dated 18.1.2011 has stated that such of those temporary employees who do not apply and are or not successful shall cease to be in the employment. Those temporary persons, who were not governed by the order of the Hon'ble Apex Court shall cease to be in the employment. Therefore, as the Petitioner was not taken further, the question of reengaging him by the Respondents' corporation does not arise and it will be contrary to the guidelines fixed by the Hon'ble Apex Court. It is stated that not engaging the services of a daily wager is in obedience of the above order of the Hon'ble Supreme Court of India. As per the employment notification dated 20.5.2011 the candidates who do not satisfy the eligibility conditions are liable to be disqualified at any stage of the selection which has been strictly followed by the Respondents' management. as the recruitment process was over and the Petitioner did not satisfy the eligibility criteria, the Petitioner was not entitled to be taken in service. With the above averments, the Respondents submitted for dismissal of any the claim petition filed by the Petitioner as devoid of merit and is to be rejected.

4. As per the averments of both the sides, the following points are to be determined:

I. Whether the termination order orally issued by the Respondents is illegal and bad in Law and in violation of Article 14 and 21 of the Constitution of India and provisions of Sec.25 N of the Industrial Disputes Act, 1947.

II. Whether the Petitioner is eligible to get employment under the Respondents' management in obedience of the direction of the judgement of Hon'ble Supreme Court of India passed n the case of Life Insurance Corporation of India and another etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005?

III. Whether the Respondents have violated the provisions under Sec.25 N of the Industrial Disputes Act, 1947?

IV. Whether the Petitioner is entitled to get employment under the Respondents and also eligible to get all the consequential benefits including back wages and

V. To what other relief the Petitioner is entitled to get?

5. During the course of hearing of this case, the Petitioner has been examined himself as WW1 and has relied on the work particulars of the workman i.e., the vouchers for the month of June, 2012 to January, 2013. The copy of the wage registers for the month of June, 2012 to January, 2013 and statement of Account from Andhra Bank and has not marked any documents relied by him in support of his claim. The same are marked as Ex. X1 to X3 by the Court for convenience. On the other hand, the Respondents has examined Sri K. Somasekhar Rao, Sr. Manager, E & OS Department of the Respondents' management as MW1 and relied on two documents which have been marked as Ex.M1 and M2.

6. I have already heard the Learned Counsel for both the sides in the matter.

7. During the course of argument, the Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner was working in the office of the 2nd Respondent i.e., Life Insurance Corporation of India, SO, Yellandu with effect from 12.1.2008 and continued in the same capacity upto 23.1.2013 as a daily temporary Class IV employee. He has filed the work particulars like the details of temporary class IV employees engaged in the office as on 21.2.2012. The contention of the Respondents that the Petitioner was purely taken as a daily wager under the category of Peon on 12.1.2008 and as and when need arose and situation demanded the Respondents corporation paid daily wages as applicable, which clearly indicates that the Petitioner worked intermittently as claimed by them. The Petitioner in his chief evidence affidavit has stated that he was engaged in the Respondents' corporation from 12.1.2008 to 23.1.2013. The management witness MW1 in his cross examination has admitted that they have engaged the Petitioner intermittently upto 31.1.2011 and from 1.4.2011 to 31.1.2013 and the Petitioner worked continuously till the date of his termination with effect from 1.2.2013. MW1 also admitted that the calculation sheet relied on by the Petitioner indicates that the Petitioner has worked 240 days from 1.4.2012 to 31.1.2013. He contended that the Petitioner has worked continuously for more than 240 days in a period of 12 months prior to the date of termination of his service i.e.,

31.1.2013. He contended that the termination of the workman by oral instructions which amounts to illegal retrenchment as mandate procedure has not been followed as per Sec.25N of the Industrial Disputes Act, 1947. He also contended that as the Petitioner was working in the Respondents' corporation from 1.4.2011 to 31.1.2013 continuously and has passed the test of continuous service of 240 days in the precedent 12 months. He is entitled to get the benefit. The Petitioner in his evidence affidavit as well as in his claim statement has clearly stated that he was not employed elsewhere till date and has prayed for full back wages. The Respondents have not made any attempt to disprove his claim inspite of the fact, that the onus to that effect lies on them as held by the Hon'ble Apex Court form time to time. He also contended that the Petitioner was under the employment of the Respondents' management from 1.4.2011 to 31.1.2013. Hence, the termination of service of the Petitioner orally with effect from 1.2.2013 is illegal and violative of Sec.25 N of the Industrial Disputes Act, 1947. Thus, the Respondents may be directed to reinstate the Petitioner in service with consequential benefits like full back wages from the date of his termination with effect from 1.2.2013 to the date of reinstatement, with 18% of interest. He also contended to pass award by setting aside the termination order issued orally to the Petitioner with effect from 1.2.2013 and direct the Respondents management to reinstate the Petitioner into service together with consequential benefits with full back wages.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents contended that the claim petition filed by the Petitioner is not maintainable. He contended that in obedience to the direction of the Hon'ble Supreme Court of India passed in Civil Appeal Nos. 953-968 of 2005, the Respondents issued employment notice on 20.5.2011 mentioning the eligibility criteria inviting applications from the eligible candidates to absorb the daily wagers. He also contended that broadly the eligibility criteria are as under which is quoted below for ready reference:

a) All temporary persons working in LIC of India for more than 5 years as on 18.1.2011.

b) Possessing minimum eligible qualification and age as prescribed by the LIC of India at the time of their entering in to LIC of India.

c) Candidates have to submit the copies of proof of working with the Corporation for more than 5 years as on 18.1.2011 duly signed by the Chief/Sr/Branch Manager of the Branch Office, Manager (P & IR) /Manager (OS) of the respective Divisional Office.

d) The onus of furnishing the authentic documentary proof for the above at the time of submission of the application shall be on the candidate.

He contended that those who have not fulfilled the above eligibility criteria, their applications have not been considered. The Petitioner has not fulfilled the above criteria for which his application was rejected. The Petitioner has admittedly worked in the Life Insurance Corporation of India, but he was continued upto 31.1.2013. The Petitioner has not complied with the above criteria, for which his case was not considered. He further contended that the Respondents corporation had taken persons on daily wages, whenever need arose and situation demanded. The Petitioner herein was purely taken as a daily wager under the category of daily wage basis from July, 2010 onwards that too intermittently. The Yellandu, SO was inaugurated on 17.1.2008 and thereafter whenever the need arose and situation demanded, the Respondents' corporation paid daily wages to the workers as applicable. Therefore, the question of joining date as claimed by the Petitioner as 12.1.2008 is not correct. The Petitioner has not been engaged by the Respondents' management on 12.1.2008, and his services were purely on daily wage basis. As the Petitioner has not fulfilled the minimum criteria i.e., completion of five year of service as on the cutoff date, his case was not considered. The Petitioner was not eligible for the written test as per the guidelines of the Apex Court. The burden of proof lies on the Petitioner only with regard to compliance of the eligibility criteria as decided by the Hon'ble Apex Court, and his continuous service as contended by him in his petition. The Petitioner was taken into service as a daily wager at his request in the Respondents' corporation as and when work arose. Since the Petitioner has not fulfilled the required criteria in obedience to the employment notice, his application was not considered. Since the Petitioner has not worked 240 days continuously in a year, he is not entitled for retrenchment compensation as provided under Sec.25N of the Industrial Disputes Act, 1947. He was only taken as a daily wager under the category of "daily wager" intermittently. Hence, compliance of Sec.25N of the Industrial Disputes Act, 1947 does not arise. The Petitioner was never appointed under the management of Life Insurance Corporation of India (Employment Of Temporary Staff) Instructions, 1993 dated 28.6.1993 nor under any other instructions issued by the Corporation from time to time. Therefore, the termination of the services of the Petitioner does not arise. The service of the Petitioner was not taken further by the Respondents at any point of time. The Petitioner has never worked in the office of the 2nd Respondents with effect from 12.1.2008 to 31.1.2013 continuously. The Petitioner has made up a false story in order to get employment. The contention of the Petitioner that there is vacancy in the office of the Respondents' corporation is totally false. Since the Petitioner has worked on temporary basis, the question of his regularization does not arise. Since the Petitioner had been engaged on daily wage basis and has not worked 240 days continuously in a year, he is not entitled to get retrenchment compensation and he is not also entitled for regularization. He further contended that pursuant to the employment notice, the Petitioner has not fulfilled the eligibility criteria that is why his case was not considered. He has not worked continuously for a period of five years before issuance of the employment notice in compliance to the order of the Hon'ble Apex Court. Therefore, the Petitioner is not eligible to get any employment. Lastly, he contended that though the Petitioner has relied on his working particulars like, copies of wage register, wage slips, statement of account of Andhra Bank. Those documents clearly go to show that he has worked from June, 2012 to January, 2013 and the payment of wages also shows that he has not been paid for the entire month. Those work particulars of the Petitioner is sufficient to show that the Petitioner has not completed 240 days in a year. Therefore, basing on the documents relied on by the Petitioner it is sufficient to hold that the Petitioner is not entitled to get compensation benefit and the Respondents

have not violated any of the provision as under Sec.25N of the Industrial Disputes Act, 1947. The Petitioner has not relied on any document to show that he has complied the requirement of the employment notice issued by the Respondents' corporation, pursuant to the direction of the Hon'ble Apex Court passed in Civil Appeal Nos. 953-968 of 2005. Mere admission of MW1 that the Petitioner has worked 240 days in a year is not sufficient to prove his case. When the Petitioner was working as a casual labourer on daily wages basis he has to prove how he worked for more than 240 days in a year.

9. **Point No. I**: On consideration of the rival contentions of both the sides, it is seen that the Learned Counsel appearing for the Petitioner has already contended that the Petitioner was working in the Respondents' organization from the year 2008 to 2011 and he has completed five years of service. He has also contended that again the Petitioner worked under the Respondents from 1.4.2011 to 31.1.2013 and for the above period he has got a difference of minimum wages, as per the order of Regional Labour Commissioner(C). But WW1 in his cross examination has clearly admitted that he has not filed any document to show that he has worked under the Respondents from the year 2008 to 2011 and he has received the difference of wages from 1.4.2011 to 31.1.2013. Admittedly, except, the work particulars of the Petitioner i.e., the vouchers from the month of June, 2012 to January, 2013 and copy of the wage register for the month of June, 2012 to January, 2013 and statement of Andhra Bank, no other documents have been relied on by the workman towards receipt of salary from the Respondents' management. Those work particulars of the Petitioner clearly shows that the Petitioner has only worked from the month of June, 2012 to January, 2013, maximum for a period of 8 months as a casual labourer intermittently. No other documents were filed from the side of the workman to show that he was working continuously under the Respondent. The workman further admitted that he has not received either any appointment letter or any termination letter as because his appointment is oral and termination is also oral. When no documents are relied on from the side of the workman and no averment is made in his claim statement regarding his working period from 2008-2011 under the Respondents it can not be stated that the workman has completed five years of service under the Respondents management. The workman has relied on the judgement of the Hon'ble Apex Court decided in Civil Appeal No.953-968 of 2005 along with the certificate of conciliation issued by the conciliation officer. The Respondents have also not disputed the judgement of the Hon'ble apex Court passed in Civil Appeal No.953-968 of 2005. But the Respondents stated that pursuant to the judgement of the Apex Court, the Respondents issued employment notice to the casual workers who are coming under the eligibility criteria to be engaged permanently in the Respondents organization. The workman has nowhere sated that he has fulfilled the eligibility criteria to be appointed under the Respondents management. The workman has also not filed any document to show that how he has complied the eligibility criteria to be regularized as a labourer under the Respondents organization. Nor he has filed any document to show under which manner his application was rejected / and not accepted. The Learned Counsel for the workman contended that when MW1 in his cross examination has admitted that the Petitioner was working at SO, Yellandu as a daily wager intermittently, there is no need of having any such document to that effect. On the other hand, the Learned Counsel for the Respondents submitted that when SO, Yellandu was established in the year 2008, whenever there is need, they used to engage daily labourers in their office, but not continuously and the Respondents in their counter has admitted that the workman was working as a daily wager intermittently as because he was working as a daily labourer as and when required, that does not mean that he was working continuously under the Respondent. It is also noticed that the document relied on by the workman Petitioner clearly shows that from the month of June, 2012 till January, 2013 he has worked there and he has submitted documents to that effect. If the workman has worked from the year 1.4.2011 to 31.1.2013, what prevented him to file any document for that period i.e., from 1.4.2011 onwards. As because MW1 admitted that the workman was working from the 1.4.2011 to 31.1.2013 continuously till the date of his termination, it can not be stated that the workman has completed 240 days of work continuously in a year and his work was perennial in nature. Unless and until, the Petitioner workman would prove that he has worked continuously for a period of 240 days in a year and his work was perennial in nature it cannot be stated that the workman has been illegally terminated from service. It is the case of the Petitioner workman that he joined in the Respondentsorganization orally and his termination was oral but it is not known the actual date of his joining and actual date of his termination. In absence of any such cogent evidence it cannot be stated that the workman has worked continuously under the Respondents organization for a period of 240 days in a year and his work was perennial in nature and his termination is illegal when the Respondents has categorically stated that they have engaged the services of the workman intermittently as and when required. In fact no satisfactory evidence is available before this Tribunal to consider that the termination order orally issued by the Respondents is illegal and bad in Law and in violation of Article 14 and 21 of the Constitution of India and provisions of Sec.25 N of the Industrial Disputes Act, 1947.

Thus, Point No. I is answered accordingly.

11. **Point No.II**: The Petitioner has contended that he has completed five years of service under the Respondents management and he is eligible to get the employment under the Respondents management pursuant to the judgement of the Hon'ble Supreme Court of India passed in the case of Life Insurance Corporation of India and another etc., Vs. D.V. Anil Kumar etc., in Civil Appeal Nos. 953-968 of 2005. Admittedly, the Petitioner has nowhere stated when he applied for the post and when his application was rejected. The Respondents has fairly stated that pursuant to the above stated judgement, they have issued employment notice with the required criteria, but as the Petitioner failed to comply the required criteria his case was not considered. The Petitioner has not stated in which way he has complied the employment notice issued by the Respondents organization and in which manner his application was rejected. When no document was produced from the side of the Petitioner workman to show whether he has complied the eligibility criteria mentioned in the employment notice pursuant to the judgement of the Hon'ble Apex Court, in Civil Appeal Nos. 953-968 of 2005, it cannot be stated that the Petitioner is eligible to get an employment under the Respondents organization.

Thus, Point No.II is answered accordingly.

12. **Point Nos. III to V:**. All these three points are taken up together for convenient discussion, as their answer give rise to the same facts and laws involved for final discussion, In view of the observations made in Point No.I, it has already been held that the Petitioner workman has not worked continuously for a period of 240 days in a year under the Respondents and his work was perennial in nature. Therefore, the Respondents have not issued any notice as provided under Sec.25N of the Industrial Disputes Act, 1947. In fact, as the Petitioner worked intermittently as a daily wage labourer under the Respondents organization he is not entitled to get any compensation under Sec.25N of the Industrial Disputes Act, 1947 and the Respondents have not violated any such provision, and in the circumstances stated above, the Petitioner workman is not entitled to get any other relief.

Thus, Point Nos.III to V are answered accordingly.

ORDER

In view of the fore gone discussion, the petition is dismissed. Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 29th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Satya Prakash	MW1: Sri K. Somasekhar Rao

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

Ex.M1: Photostat copy of the order of Hon'ble Supreme Court of India dt.18.1.2011 in CA Nos.953-968/2005

Ex.M2: Photostat copy of the employment notice issued by the Respondents organization dt.20.5.2011 calling for application for recruitment of Peons from the eligible persons.

Documents marked by the Court

Ex. X1 : Photostat copies of bunch of vouchers from the month of June, 2012 to January, 2013.

Ex. X2 : Photostat copy of extract from wage register from the moth of June, 2012 to January, 2013.

Ex. X3 : Photostat copy of statement of account from Andhra Bank.

नई दिल्ली, 29 जनवरी, 2019

का. आ. 210.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 1/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-17012/130/2014-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 21.01.2019.

[No. L-17012/130/2014-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of December, 2018

INDUSTRIAL DISPUTE No. 1/2015

Between :

Sri Noolla Pydiraju,
S/o Appalaswamy,
Door No.27-134, Appannapalem,
Visakhapatnam (A.P.) – 530 047. …Petitioner

AND

The Manager (E & OS)
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530004. …Respondent

Appearances:

For the Petitioner : None

For the Respondent : Sri K.R.L. Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/130/ 2014-IR(M) dated 5.12.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India, and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Shri Noolla Pydiraju, Ex-temporary sub staff on 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled?"

The reference is numbered in this Tribunal as I.D. No. 1/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner has already been settled and the Petitioner has got nothing to raise any claim against the Respondents. Hence, the case of the Petitioner is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 20th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 जनवरी, 2019

का. आ. 211.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 7/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-17012/143/2014-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of
M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 21.01.2019.

[No. L-17012/143/2014-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of December, 2018

INDUSTRIAL DISPUTE No. 7/2015

Between :

Sri Banoth Chandulal,
R/o (V) OTAI Thanda,
P.O.: OTAI, (M) Kothagudem (Pakhal)
Warangal Dist.
Warangal – 506135. … Petitioner

AND

1. The Zonal Manager,
   LIC of India,
   Zonal Office,
   Opp. Secretariat,
   Saifabad, Hyderabad – 500 004.
2. The Sr. Divl. Manager,
   LIC of India, Divl. Office,
   Balasamudram,
   Hanamkonda, Warangal Dist.,
   Warangal. … Respondents

Appearances:

For the Petitioner : None

For the Respondent : Sri K. Rama Lingeswara Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/143/ 2014-IR(M) dated 22.1.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Zonal Office, Hyderabad / Divisional Office, Hanamkonda, Warangal Dist., in terminating the services after crossing 240 days continuous service of Sri Banoth Chandulal, Ex.Temp. Substaff LIC of India, Divisional Office, Warangal, w.e.f. 1.2.2013 is justified or not? If not, to what relief the applicant is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 7/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has nothing to raise any claim against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 जनवरी, 2019

का. आ. 212.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सीमेंट कार्पोरेशन ऑफ इण्डिया एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 93/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-29011/12/2015-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Cement Corporation of India and other and their workman, which was received by the Central Government on 21.01.2019.

[No. L-29011/12/2015-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan , Presiding Officer

Dated the 24th day of December, 2018

INDUSTRIAL DISPUTE No. 93 /2015

Between:

The General Secretary & Dy. General Secretary,
C.C.I.Contractor Workers Union (AITUC),
C/o CCI Tandur Cement Factory,
Karankote (Telengana). …Petitioner

AND

1. The General Manager,
M/s. Cement Corporation of India,
Tandur Cement Factory,
Tandur, Ranga Reddy District.

2. Shri Selvarajan, Contractor,
C/o M/s. Cement Corporation of India,
Tandur Cement Factory, Tandur,
Ranga Reddy District. … Respondents

Appearances:

For the Petitioner : None

For the Respondent : M/s. Valluri Mohan Srinivas, V. Rajyalakshmi & S.C. Aravind, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29011/12/2015-IR(M) dated 1.10.2015 referred the following dispute between the management of Cement Corporation of India and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the management of Cement Corporation of India, Tandur in reducing the retirement age of contract labour from 60 years to 58 years is legal and justified? If not, to what relief the workmen are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 93/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of availing several opportunities to file claim statement, the Petitioner union failed to file Claim statement and remained absent. There is no representation on behalf of the Petitioner union on the date fixed inspite of repeated calls, which clearly indicates that the dispute of the Petitioner union has already been settled. In the circumstances stated above, it is felt that the Petitioner union has got no claim to raise. Thus, 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of December, 2018.

MURALIDHAR PRADHAN , Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 जनवरी, 2019

का. आ. 213.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 06/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-30011/33/2015-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January, 2019

S.O. 213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2015) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Limited and their workman, which was received by the Central Government on 21.01.2019.

[No. L-30011/33/2015-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri Mrinmoy Kumar Bhattacharjee, M.A., LL.B., Presiding Officer,

CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 06 of 2015

In the matter of an Industrial Dispute between :—

The General Secretary, North Guwahati Bottling Plant Labour Union, Guwahati, Assam …Claimant/ Workmen

Vrs

The Management of I.O.C.L., Guwahati, Assam and 01 other, …Management/O.P.

APPEARANCES :

For the Union : Mr. K.M.Haloi, Learned Advocate.

For the Management : Mr. S.N.Sarma, learned Senior Advocate.

Mr. M.Hussain, learned Advocate.

Date of Award: 11.01.2019

AWARD

1. This industrial dispute between The General Secretary, North Guwahati Bottling Plant Labour Union, Guwahati, Assam and the Management of I.O.C.L, Bottling Plant, Guwahati, Assam was referred to this Tribunal by the Central Government with the following schedule.

SCHEDULE

"Whether the action of the management of Indian Oil Corporation Ltd. Bottling Plant North Guwahati, Abhoypur, Guwahati 781031 is justified in rejecting the demand of the union of upgrading the skill category of the contract workers based on qualification and year of experience and not allowing payment of wages and other benefits as per IOCL General Notification dated 22.10.2014 with effect from 01.04.2014 ? If not, what relief the contract workers are entitled to from the management of the IOCL Bottling Plant North Guwahati ?"

2. After receipt of the order of reference, notices were issued to the parties and they appeared and submitted their respective written statements.

3. The claim statement on behalf of the North Guwahati Bottling Plant Labour Union was submitted by the General Secretary of the Union stating inter-alia that the benefit of up-gradation of contract workers from unskilled to semi-skilled and semi-skilled to skilled or highly skilled category in the concerned industry ought to have been made effective with effect from 01.04.2014 in view of the Memorandum of Settlement dated 15.07.2013. The facts alleged by the Union may briefly be stated as under. A large number of contract labours were working in the North Guwahati Bottling Plant under IOCL for last more than 15 years and they were discharging the duties of semi-skilled, skilled and

highly skilled workers though they were being paid the wages and other benefits as were entitled to the unskilled workers. The Union have been raising demand of up-gradation of benefit and ultimately an MOS was signed by the North Guwahati Bottling Plant Labour Union and Contractors of North Guwahati Bottling Plant in presence of the management before the Assistant Labour Commissioner (Central), Guwahati on 15.07.2013 regarding revision of wages and other benefits of contract labours under IOCL. It was further stated that as per the aforesaid settlement, wages and other benefits were revised for 4 categories of contract labours namely unskilled, semi-skilled, skilled and highly skilled. At that point of time semi skilled and highly skilled contract labours were not there in IOCL and it was agreed that a Committee shall be formed by the management to explore the feasibility of introduction of semi-skilled and highly skilled contract workers. After signing of the MOS dated 15.07.2013 management of IOCL formed a Committee to explore feasibility for introduction of semi-skilled and highly skilled contract workers and the committee submitted its recommendation before the management regarding categorization of jobs under semi skilled and highly skilled as well as wage revision of all the 4 categories of contract labours. Thereafter the management issued a general Notification dated 22.10.2014 whereby it was notified that the recommendation of the aforesaid Committee was approved and all respective HODs of IOCL (AOD) were requested to consider all 4 categories i.e. unskilled, skilled, semi-skilled and highly skilled contract workers wherever applicable while initiating new contracts. It was further stated that although by Notification dated 22.10.2014 it was stated that such up-gradation and categorization would be effective for all new Notice Inviting Tender to be issued subsequently , according to the Union, as per MOS dated 15.07.2013, the same up-gradation etc. should have been made effective from 01.04.2014. On the basis of the aforesaid facts the Union prayed for an Award directing the management to provide the benefits of up-gradation as per general Notification dated 22.10.2014 to the contract workers at North Guwahati Bottling Plant with effect from 01.04.2014.

4. Written statement of the management side was submitted by Sr. Plant Manager, North Guwahati Bottling Plant of IOCL wherein the claim raised by the Union was sought to be resisted. It was stated that at the time of signing the MOS dated 15.07.2013 before the Assistant Labour Commissioner (Central), Guwahati, there was no semi skilled and highly skilled contract workers in the Bottling Plant of IOCL in regard to the ongoing contracts. However, after the formation of the Committee to consider the feasibility of such up-gradation the Committee submitted its report suggesting introduction of semi skilled and highly skilled workers and the management accepted the report and vide general Notification dated 22.10.2014 it was clearly stated that henceforth the said new category of workers, i.e. semi skilled and highly skilled, wherever applicable, would be considered against all new Notice Inviting Tenders of the IOCL. According to the management, said up-gradation was to be made effective for all future tenders and was clearly prospective in nature. The management prayed for dismissing the claim of the Union for granting revised pay as per upgraded categorization of the workers retrospectively from 01.04.2014.

5. Both sides examined one witness each. The workmen witness Sri Nabajit Sharma, General Secretary of the North Guwahati Bottling Plant Labour Union stated that the MOS dated 15.07.2013 was regarding revision of wages and other benefits of contract labours under IOCL with effect from 01.10.2012 for a period of 4 years. He further stated that the Committee which was formed by the management to explore the feasibility for introduction of semi skilled and highly skilled categories of workers in the IOCL submitted its report in the affirmative which was subsequently accepted by the management. He admitted in his evidence on Affidavit that in the general Notification dated 22.10.2014 it was mentioned that the *"notification shall be effective for all new Notice Inviting Tenders to be issued subsequently"*. However, according to the Union, the benefits ought to have been extended to the respective categories of workers with effect from 01.04.2014 which the management illegally denied. During cross-examination he denied the suggestion of the management that settlements were to be implemented as per Notification dated 22.10.2014.

6. The management witness Sri Kalyan Nath, the authorized Officer of the IOCL (AOD) deposed that through Memorandum of Settlement signed between the Contractor Association and AOC Contractual Labour Union and Mineral Oil Workers' Union in presence of the Assistant Labour Commissioner (Central), Dibrugarh on 01.07 2013, was for revision of wages and benefits of contract workers, it was agreed by the parties that semi- skilled and highly skilled categories would be introduced in IOCL (AOD). He further stated that in spite of MOS dated 01.07.2013 North Guwahati Bottling Plant Labour Union demanded a separate MOS which was signed on 15.07.2013 wherein the parties agreed that at the relevant point of time semi-skilled and highly skilled contract workers were not present in IOCL (AOD) and that such categories of workers would be introduced in future. A Committee was accordingly formed and after acceptance of the report of the Committee said two categories i.e. semi skilled and highly skilled categories were to be introduced. The witness denied that the Notification dated 22.10.2014 is to be made effective from 01.04.2014. He further stated that skill categorization of workers is to be applied on the basis of circumstances and job requirement and the benefits of new categories of semi skilled and highly skilled workers have already been extended to all such contract workers from subsequent contracts. During cross-examination he admitted that wages and other benefits of the workers are usually revised every 4 years. He further admitted that Exhibit-1 is the MOS dated 15.07.2013 which is effective from 01.10.2012 to 30.09.2016. He denied the suggestion of the workmen side that Exhibit-2 dated 22.10.2014 was completely unjustified and arbitrary.

7. During argument, the learned Counsel appearing for the workmen side submitted that once introduction of new categories of semi skilled and highly skilled workers were accepted by the management IOCL (AOD) it was obvious that the benefit of such up-gradation plus wage revision ought to have been extended retrospectively to the categorized workers from 01.04.2014. He further stated that the management hiding behind the Notification 22.10.2014 (Exhibit-2) denied such benefits to the concerned category of workmen with effect from 01.04.2014 though such benefits were extended to them subsequently from the year 2016. Learned Sr. Counsel appearing for the management side submitted that MOS dated 15.07.2013 (Exhibit-1) categorically mentioned the following:

"Both the parties agreed that a committee be formed by the management of IOC Ltd. (AOD) to explore feasibility for introduction of semi-skilled and highly-skilled category in line with industry practice and in consultation with Contractor Worker Union i.e. NGBPLU & North Guwahati Contractor's including modalities of implementation of semi-skilled and highly-skilled category in IOCL(AOD) covering Marketing locations of entire North East, NGBPLU and the North Guwahati Contractor's agreed in principle that the committee so formed by Management of IOCL(AOD) requested to submit their report/recommendations within four(4) months from the date of constitution of the committee and thereafter endeavour should be made by IOCL(AOD) management to implement the same latest by beginning of the calendar year 2014." He further referred to the general Notification dated 22.10.2014 (Exhibit-2) wherein the following has been categorically mentioned:

"The committee submitted the report with recommendations regarding categorization of jobs under Semi-skilled and Highly-Skilled categories. The four categories of Contract Workers identified by the Committee are attached as Annexure-I. The wage rate of Semi skilled and Highly skilled workers as per MOS dated 01.07.2013 is enclosed as Annexure-II for ready reference. Management has approved the recommendations of the committee and it has been decided that, henceforth the above mentioned new categories i.e. Semi skilled category and Highly skilled category of contract workers wherever applicable as per job requirements, shall be also considered against all new tenders of IOCL(AOD)." He also submitted that the demand of the workmen side that the upgraded categorization of the contract labours ought to have been made as per Exhibit-1 was completely misconstrued and misplaced since at that point of time there was no semi skilled and highly skilled contract labours in the IOCL (AOD). He further stated that in terms of the general Notification (Exhibit-2) categories of semi skilled and highly skilled workers were to be introduced from the subsequent contracts. It was admitted by both the parties that all the categories of contract labours in the IOCL (AOD) i.e. unskilled, semi skilled, skilled and highly skilled have been extended wages and benefits as applicable to them from the year 2016.

8. Admittedly, upgraded wages and corresponding benefits have already been extended to the respective categories of contract workers from the year 2016. The short dispute is whether such benefits ought to have been extended from 1.4.2014. From Ext-1 dated 15.7.2013 it appeared that the committee was requested to submit the report regarding new categorization within four months. Subsequently, vide Ext-2 dated 22.10.14 the management approved the recommendations of the committee and it was specifically mentioned that henceforth new categories namely, semi-skilled and highly skilled workers, wherever applicable as per job requirement would be considered in all new tenders of the IOCL (AOD). The workmen witness also admitted that the notification (Ext-2) would be effective for all new NITs to be issued subsequently. On cumulative consideration of the evidence adduced by the parties including the documents (Ext-1 & 2) it appeared that the new categories of contract workers, namely, semi-skilled and highly skilled were to be introduced from subsequent contracts. Hence, the demand for retrospective effect of wages on the basis of new categories from 1.4.2014 did not appear to be justified. Such categories were to be introduced from subsequent contracts and admittedly, such categories were introduced as mentioned in Ext-2 and the up-graded wages etc were being paid to the workers of respective categories from the year 2016. The action of the management, therefore, did not appear to be unjust. Accordingly, the reference is disposed of with a no relief award.

Given under the hand and seal of this Tribunal on this 11th day of January, 2019.

MRINMOY KUMAR BHATTACHARJEE, Presiding Officer

नई दिल्ली, 29 जनवरी, 2019

का. आ. 214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 16/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.01.2019 को प्राप्त हुआ था।

[सं. एल-17012/8/2010-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th January. 2019

S.O. 214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2010) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 21.01.2019.

[No. L-17012/8/2010-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 16/2010

Ref.No. L-17012/8/2010-IR(M) dated 02.08.2010

BETWEEN :

Sri Ved Mitra Shukla,
S/o Sri Ambika Prasad Shukla,
Village Shyampur, Post Hussainpur (Jaffarganj)
Distt. Ambedkar Nagar, U.P.

AND

1. The Divisional Manager
   LIC, Divisional Office, Baldev Niwas Parisar,
   Reedganj, Faizabad
2. The Branch Manager,
   LIC of India, Branch Office, Ambedkar Nagar, U.P.

AWARD

1. By order No. L-17012/8/2010-IR(M) dated 02.08.2010 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri V.M. Shukla, S/o Sri Ambika Prasad Shukla, Ambedkar Nagar and the Sr.Divisional Manager/Branch Manager, LIC, Faizabad/Ambedkar Nagar for adjudication.

2. The reference under adjudication is:

> **"WHETHER THE ACTION OF THE MANAGEMENT OF LIC OF INDIA, BRANCH OFFICE, AKBARPUR IN APPOINTING SRI VED MITRA SHUKLA SECURITY GUARD W.E.F. 01.06.2003 TO 28.02.2005 AND NOT PAYING THE WAGES FOR 20 MONTHS AND IN TERMINATING HIS SERVICES WITHOUT SERVING ANY NOTICE IS JUST AND LEGAL? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"**

3. As per the claim statement W-3 dated 18.09.2010, the workman has stated in brief that he was appointed on 01.06.2003 on the post of Security Guard, under the subordination of the opposite party, and was required to work at LIC branch office Ambedkar Nagar. The applicant has stated that he is an ex-army men, and LIC was in need of Security Guard, therefore the application has been moved by the petitioner, the interview was conducted and since he was ex-soldier of Indian Army, he was immediately appointed on the said post. Since the applicant possessed a licensed gun, he was asked to ensure Security of the office= premises and pre=condition before the appointment was to possess a gun which was fulfilled. The petitioner has further asserted that he satisfactorily performed his duties, there was no complaint against him regarding his work and conduct, and he had continuously worked since 01.06.2003 to 28.02.2005 but was not paid salary due. The workman has alleged that opposite party did not ensure the payment of salary, rather it avoided to concede the request of the petitioner, although the Branch Manager has written several times to the Divisional Office of the LIC, Lucknow and Faizabad but salary was not disbursed. He has stressed that his services were orally terminated on 28.02.2005 without any prior notice and without payment of any sum in lieu of the notice.

4. While quoting the provisions of Section 25 B,F and G of the I.D. Act. the petitioner has asserted that he had worked for 22 months, since 01.06.2003 to 28.02.2005, and it was incumbent upon the opposite party to serve legal notice before his termination. Violation of provisions of the I.D. Act has been further alleged. Illegal, improper and irregular attitude on behalf of the management has been pleaded in the claim statement.

5. With the aforesaid averments, request has been made by the petitioner for payment of the salary for the aforesaid period as well as for the period of unemployment alongwith damages etc.

6. Several documents have been annexed with the claim statement, viz W-5 to W5/18.

7. The management while denying the allegations of the claim statement, has filed written statement M-8, stating therein that LIC is a statutory body formed under the LIC Act.1956, and its recruitment process is governed by the LIC (Staff) Regulations 1960 and there is no cadre under the head of Security Guard. The petitioner has not annexed any

appointment letter etc. with the claim statement and a contract for providing Security Guard for the branch was given vide letter dated 29.06.2001 to M/s Raman Security Guard Services and it had provided the petitioner as Security Guard at Ambedkar Nagar branch, relevant papers have been annexed by the opposite party in this regard.

8. The opposite party has further asserted that for the period claimed by the petitioner he was deputed as Security Guard, and from March 2005 another Security Guard in his place was provided by the Security Agency. The details submitted by the contractor as per the contract were paid by the opposite party through vouchers. The petitioner had also filed the applications at various places, including District Consumer Dispute Redressal Forum, Ambedkar Nagar against the LIC, where the reply was also filed. The Security Guard Services in its reply before the Forum has clearly mentioned that salary was regularly paid to the applicant month to month upto Feb.2005 and in his place another Security Guard was posted w.e.f. March 2005. Allegations leveled in the claim statement have been false and concocted as pleaded by the opposite party.

9. The management has also stated that the services of the workman was not satisfactory therefore the contractor called back him from the branch office, some other Security Guard/Gunman was sent to the branch office. The payment of labour charges was duty of the contractor, and LIC is not concerned with it, neither the petitioner was appointed by the LIC nor any master servant relationship ever existed between the petitioner and the Security guard. The opposite party has denied that any so called letter was written by the branch office to the Divisional Office, Lucknow for payment of the salary to the petitioner. No amount is due towards the applicant from the LIC and all the allegations made in the claim statement are false and fribulous. The alleged fact that the petitioner has worked for 240 days in the LIC and he is an employee of the LIC, has been denied by the opposite party. Several documents have been annexed by the opposite party alongwith the written statement.

10. With strong denial of the counter allegations leveled in the written statement, rejoinder W-9 has been filed by the petitioner, reiterating the pleas taken in the claim statement.

11. During the proceeding of the case certain documents have been filed by the workman as per list W-12.

12. The petitioner has adduced himself before this Court in evidence. He has been cross examined on behalf of the management. In rebuttal the management has filed the affidavit of Sri S.K. Gupta as M-19, as well as Sri Mazhar Abbas, Sr.B.M. they have been cross examined on behalf of the workman. Further affidavit of Sri Pankaj Misra, Director, M/s Raman Security Guard Services has been filed as M-33, he has also been cross examined on behalf of the workman.

13. Arguments in detail, advanced on behalf of both the parties, have been heard heard at length. Record has been scanned thoroughly.

14. The petitioner claiming himself an employee of the opposite party LIC has submitted that although he has worked for about 22 months w.e.f. 01.06.2003 to 28.02.2005, yet his services were terminated on oral order in contravention of the provision of the I.D. Act, no prior notice was issued, salary due has also not been paid to him for the work done by him. While refuting the allegations, the management has submitted that the petitioner has never been an employee of the LIC, rather in pursuance of the contract made by the LIC with private Security Guard Services, the Security Guard services has deputed the petitioner to perform the duty of Guard and all the salary or wages were to be paid by the contractor to the petitioner. The opposite party has asserted that the management is not concerned with the payment of any dues etc. Reference of the case filed by the petitioner before the District Consumer Forum, Ambedkar Nagar has also been made in the written statement.

15. The workman in his cross examination dt. 30.01.2012 has submitted that he did not have any acknowledgment for the so called application given to the branch office of his appointment. In further cross examination dt. 17.12.2012 the petitioner has submitted that he did not have any appointment letter, since he was appointed immediately on his request. No appointment letter was given to him he has submitted, neither any Identity Card was issued by the LIC. The petitioner has also asserted that during the Elections he was deputed to perform duties by the Branch Manager, in furtherance of the directions given by the District Magistrate. The petitioner has also accepted the facts of the case filed before the District Consumer Forum, Ambedkar Nagar wherein the contractor of M/s Raman Security Guard Services was arrayed by him as opposite party no.3. He has stated before the Court that the Security Guard Services was impleaded as party before the Consumer Forum on the advice of the LIC, Branch Manager. Regarding paper no. W5/6 to W5/12 and W5/14 to W5/18, he has also been cross examined.

16. The management witness Sri S.K. Gupta filed his affidavit in support of the written statement and in the cross-examination he has stated that the petitioner was appointed by the M/s Raman Security Guard Services Agency. He has specifically asserted that the paper No. W-5 was not sent by the LIC to Divisional Office. Regarding signature on several

papers viz. W5/3 to W5/18 none has been identified or verified. The other witness Sri M.Abbas by whom the petitioner was allegedly appointed as Security Guard,in his affidavit M-28 has specifically asserted that the petitioner has never been an employee of the LIC, his salary was paid by M/s. Raman Security Guard Services and in the earlier case filed by the petitioner before the District Consumer Forum, the Security Guard Agency has also filed its written submission. Facts regarding contract services have also been elaborated by Mr. M.Abbas in his affidavit. During the cross examination he has specifically denied his signatures on several relevant letters filed before the RLC (C) Lucknow, while admitting simultaneously certain other letters. However, these letters do not indicates that the petitioner was ever appointed by the LIC to perform the duty of Security Guard at the Branch Office.

17. The contractor of the Security Agency, has also filed affidavit M-33 before this Court. In his cross examination he has clearly admitted that the petitioner was deputed by the Agency to work as Security Guard at the LIC branch office. In para 9 of the affidavit he has specifically asserted that upto Feb.2005, monthly wages due have been paid by the Security Agency to the petitioner and no dues are pending, petitioner was never employee of the LIC rather as per contract he was deputed as the Security Guard by the Agency to work as Armed Guard at the LIC office.

18. Learned Authorized Representative for the workman has referred the judgment dated 18.03.2015 delivered by the Hon'ble Supreme Court in Civil Appeal No. 6950/2009 (with C.A. No. 6951 to 6954/2009 and 6956/2009)TamilNadu Terminated Full Time Temporary LIC Employees Association vs LIC of India & Others. The opposite party submits that this Ruling does not apply to the facts and circumstances of the present case.

19. The aforesaid judgment dt. 18.03.2015 relates to an award adjudicated by CGIT, New Delhi and National Industrial Tribunal, taking into account the fact and circumstances of the rererred matter, Hon'ble Supreme Court has held that the award passed by CGIT in I.D. no. 27/1991 is legal and valid and the LIC was directed to ensure compliance accordingly. The guidelines issued by the LIC have also been discussed by the Hon'ble Apex Court. While discussing the legal proposition, Hon'ble Supre Court in para 27 of the above judgment has observed that the order passed by single Judge of the Hon'ble High Court as well as Division Bench of the Hon'ble High Court, are contrary to the law and legal directions laid down by the Hon'ble Supreme Court, and accordingly the orders of the Hon'ble High Court were set aside by the Hon'ble Apex Court, restoring the award of the CGIT.

20. Learned Authorized Representative for the management has relied upon the following citations;

1. (2011), 1,SCC, GM(OSD) Bengal, Nagpur Cotton Mills vs Bharat Lal & Another page 635.
2. (2010),11,SCC, MD, Hassan Cooperative Milk Producer's Society Union Ltd. vs Asstt. Regional Director, Employees State Insurance Corpn. page 537.

21. Learned AR for the petitioner asserts that the above Rulings are not applicable in this case.

22. After having heard the intellect arguments of both the parties, on perusal of the record available before the Court, it is inferred that the petitioner has failed to prove that he was ever employed or appointed by the management of LIC, and their existed any master servant relationship between therein. It is in record that the management has given a contract to the Security Agency for deputing appropriate person to work as Security Guard and for duties performed during the period in question, all the payment has been made by the Security Agency to the petitioner. Therefore, the allegations regarding illegal termination of the service of the petitioner and withholding his payment for about 20 months, by the management, can not be accepted. The petitioner is not entitled to any relief.

23. Award as above.

LUCKNOW

01.01.2019

RAKESH KUMAR, Presiding Officer

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

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Digitally signed by ALOK KUMAR
Date: 2019.02.16 10:28:49 +05'30'